

Performance Review of the Business Contract Management Process & City Attorney's Office

**Report to the City Council
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I. Introduction

A. Project Overview

The City of San Antonio (the City) engaged three firms to conduct a performance review of its City Attorney's Office (CAO) and business contract management process. One firm, DMG-MAXIMUS, served as the prime contractor and two other firms—Altman Weil, Inc. and McConnell Jones Lanier and Murphy (MJLM)—served as subcontractors.

While the three firms worked closely together, each firm was assigned specific responsibilities. Altman Weil reviewed the City's CAO. MJLM reviewed process issues pertaining to the business contract management process. DMG-MAXIMUS, in addition to managing the project, reviewed organizational and resource issues surrounding the business contract process and risk management unit.¹

The Mayor and City Council appointed an Ad Hoc Independent Performance Review Oversight Committee (the Ad Hoc Oversight Committee) to assist City staff with overseeing the project. At the outset of the project, the Ad Hoc Oversight Committee met with the consultants and City representatives to establish principles for guiding the work of the consultants. That work culminated in a final report of findings and recommendations which is presented herein.

This report contains six sections as follows:

- Introduction – a description of the project, including the project objectives, scope and methodology
- Profile of Key Operating Characteristics – a summary of relevant operating characteristics, including the City's overall operating environment, key operating statistics for the CAO and key operating statistics on business contracts
- Business Contract Findings and Recommendations – a summary of our most critical management findings and a detailed description of our recommended strategies for improving the City-wide business contract management process
- CAO Findings and Recommendations – a summary of our most critical management findings and a detailed description of our recommended strategies for improving the CAO's future performance
- Risk Management Findings and Recommendations – a summary of our most critical management findings concerning the risk management organization and a description of our recommended strategy for addressing this issue
- Implementation Issues – a discussion of the action steps and resources required for implementing the recommended improvement strategies

The project scope and approach are described below.

¹ DMG-MAXIMUS reviewed the Risk Management Division's organizational structure because of its current placement within the CAO.

B. Project Objectives and Scope

The primary objective of this project, as approved by the City and the Ad Hoc Oversight Committee, was to develop strategies for making the City's CAO and business contract management process exemplary. That is, the principle focus of this project was on improving future performance rather than on identifying prior deficiencies. Of course, the consultants were required to obtain a strategic understanding of current performance issues before they could develop practical recommendations for the future.

The project scope entailed strategic management reviews of two distinct, but inter-related elements—the CAO and the business contract process. In reviewing the CAO, we also reviewed the organizational structure of the City's Risk Management Division. This is because the Risk Management Division reports to the City Attorney. However, our review of the Risk Management Division was limited to its organizational impact on the CAO. It did not involve a performance review of the City's risk management program.

Our review of business contracts focused on citywide process issues rather than on a particular contract or organizational unit. Since our analysis centered on the effectiveness and efficiency of the City's overall business contract process, we did not review the legal or business soundness of individual contracts or the performance of individual departments. For the purpose of this study, the City defined business contracts as concession², lease³, franchise⁴ and public-private partnership agreements.⁵ Business contracts, which exclude such contracts as professional services, construction and purchase contracts, represent only about one-fifth of the contracts managed by the City.

C. Project Methodology

In accordance with the work plan approved by the Ad Hoc Oversight Committee, the project entailed seven inter-related tasks as follows:

- Task 1.0 – Strategic and Diagnostic Scan
- Task 2.0 – Benchmarking and Best Practice Survey
- Task 3.0 – Stakeholder Input Analysis
- Task 4.0 – Business Contract Process Analysis
- Task 5.0 – City Attorney's Office Review
- Task 6.0 – Opportunity Analysis
- Task 7.0 – Strategy Development and Reporting

² Concession agreements are defined as contracts by which the City receives a percent of revenues generated by a private party, usually for services delivered or goods sold by that party on City property.

³ Lease agreements are defined as contracts by which the City is compensated for the right to occupy, use or otherwise benefit from City-owned facilities or space, on a square foot basis (e.g., City lease of International Center) or a percent of revenue basis.

⁴ Franchise agreements are defined as contracts through which the City is compensated for the right to occupy or use City-owned utilities, City streets and rights-of-way (e.g., cable television franchise).

⁵ Public-private partnership agreements are defined as contracts between the City and private parties to carry out grant-funded or other authorized public purposes (e.g., grant, development and tax increment finance agreements).

These tasks and related activities are described in more detail below.

For the first task, Strategic and Diagnostic Scan, we conducted several initial interviews⁶ to obtain an understanding of the most significant issues to address during this project (these issues are outlined in Appendix A). We also identified external factors that could affect the future performance of the CAO and business contract management process. We worked with the Ad Hoc Oversight Committee to develop two strategic vision statements, one for the CAO and one for the City's business contract management processes. These vision statements are presented later in this report. We then adjusted our preliminary work plan as needed to address the project issues and vision statements.

The second task, Benchmarking and Best Practice Survey, was intended to identify promising management practices used by other public entities and obtain relevant comparative data for supporting potential recommendations. Altman Weil conducted a comparative benchmarking analysis of the CAO using two benchmarking surveys—a 1999 survey for another public sector client and an updated 2000 survey conducted this year for San Antonio. The more recent survey added four new cities (San Antonio, Dallas, Phoenix and Indianapolis) to Altman Weil's data base. Altman Weil also conducted an analysis of best practices for municipal law offices. DMG-MAXIMUS conducted a survey of best public sector contract and risk management practices. We have provided a copy of our benchmarking and best practice report in Appendix B.

DMG-MAXIMUS conducted two benchmarking surveys regarding risk management organizational issues. The first survey involved five large cities (i.e., Austin, Dallas, Fort Worth, Houston and San Diego) and the second, more limited, survey involved several cities and counties, including Anaheim (CA), Charlotte/Mecklenburg County (NC), Harris County (TX), Montgomery County (MD) and Pima County (AZ). The results of these surveys are discussed below. In addition, DMG-MAXIMUS obtained benchmarking data from the Public Risk Management Association (PRIMA). PRIMA's 1999 survey report, entitled *Cost of Risk Evaluation in State and Local Government*, summarized organizational and financial information on 21 states, 92 counties, 143 municipalities, 44 schools, and 59 other entities (utilities, pools and special districts).

The object of Task 3.0, Stakeholder Input Analysis, was to obtain client and employee perspectives regarding the City's legal services and business contract management process. Altman Weil conducted surveys of CAO clients (i.e., representatives of City operating departments) and employees⁷ to identify opportunities for improving the CAO's performance.

Using a distribution list provided by the City, Altman Weil sent a questionnaire to 209 internal clients of the CAO. Of that group, 127 clients responded, a commendable 61

⁶ These initial interviews included interviews of the City Manager's management team.

⁷ Altman Weil prepared, distributed, tabulated and analyzed surveys of all CAO employees, including separate surveys of its lawyers, paralegals and support staff.

percent response rate⁸. Altman Weil received responses from 31 different offices, with the most responses coming from Community Initiatives, Aviation, Finance, Fire, Health and Police. The results of Altman Weil's client survey, which are presented in Appendix C, compares responses from San Antonio's CAO clients to the "Altman Weil database." That database contains the responses of clients of in-house law departments *other than the San Antonio City Attorney's Office* for the same questions.

Altman Weil sent a questionnaire to 50 CAO attorneys, of which 41 responded, a commendable 82 percent response rate. We received responses from all CAO divisions. It also conducted separate surveys of paralegals and support staff.

MJLM conducted surveys of business contractors, operating department managers⁹ and operating department contract staff¹⁰ to identify opportunities for improving the City's business contract management process. We have provided a copy of our stakeholder input report in Appendix C.

During Task 4.0, Business Contract Process Analysis, we conducted numerous site visits and interviews of City personnel to obtain a detailed understanding of current business contract management processes. DMG-MAXIMUS reviewed the organizational issues associated with business contracts, such as organizational structures and departmental resources. MJLM conducted an analysis of existing processes and systems employed by various operating departments to manage their respective business contracts. MJLM also reviewed concession agreement management practices and assessed related cash management practices.

In connection with this task, MJLM prepared *As Is* process maps to determine process improvement opportunities related to the City's business contracts (a copy of the *As Is* business contract process maps is presented in Appendix D). It conducted 35 initial interviews and several follow-up interviews of department personnel¹¹. It obtained copies of sample business agreements, lists of business contracts, process diagrams, processing procedures, organization charts, and other documents related to the process. Using this information, it conducted *walk-throughs* of business contract processes to identify key process activities and hand-offs, and then prepared process maps for different types of revenue contracts managed by five different departments.¹²

For Task 5.0, City Attorney's Office Review, Altman Weil conducted numerous site visits and individual interviews of several CAO employees, including the City Attorney, all Deputy City Attorneys and selected Assistant City Attorneys. Altman Weil conducted focus group interviews of the remaining CAO employees, including lawyers, paralegals

⁸ This summary, however, covers 153 responses, because 26 respondents submitted questionnaires for more than one Division of the Office.

⁹ Using a distribution list provided by the City, MJLM distributed surveys to 10 departments of which 7 (70 percent) were returned.

¹⁰ Using a distribution list provided by the City, MJLM distributed surveys to 116 staff members of which only 23 (20 percent) were returned.

¹¹ Departments interviewed included Asset Management, Alamodome, Community Initiatives, Parks and Recreation, Police, Information Services and Internal Review.

¹² Asset Management, Alamodome, Aviation, Community Initiatives, Parks and Recreation.

and support staff. Altman Weil also conducted external individual interviews with more than one dozen lawyers and judges to obtain their perspectives of the CAO. DMG-MAXIMUS assessed the organizational linkages between the Risk Management Division (RMD) and the CAO, and assisted Altman Weil with specific aspects of the CAO review (e.g., civil service issues and department organization issues).

During the last two tasks, Task 6.0 and Task 7.0, we worked closely with the Ad Hoc Oversight Committee and City to test and refine our recommended strategies, cost estimates and implementation measures. To test our recommended strategies for improving the CAO and business contract process, we developed draft strategy templates (set forth in Appendix E) outlining our recommended strategies, as well as the implementation actions, quantifiable benefits and costs, and qualitative advantages and disadvantages associated with each recommended strategy. We then reviewed these strategy templates with the Ad Hoc Oversight Committee and City employees, and incorporated their input.

In testing the recommended strategies, we also worked with the City to refine the implementation schedule and cost estimates. We obtained comments from key City departments as to the reasonableness of the suggested responsibility assignments and worked with the City Budget Office to develop a consensus concerning the cost estimates. As a result, in conjunction with City staff, we developed a macro implementation schedule for the recommended strategies (see Appendix F) and a macro cost schedule (see Appendix G). This effort was time-consuming, but it is our experience that such work results in recommendations with high prospects of success.

II. Profile of Key Operating Characteristics

A. City Environment

With a population of 1,187,600¹³, San Antonio is the 8th largest city in the US, as well as one of the nation's fastest growing cities. The City has annexed over 80 percent of Bexar County, but its service area—about 412 square miles¹⁴—could continue to expand. The City's recent growth and projected future growth place continual pressure on City officials to increase or upgrade their service capabilities and organizational resources.

The City provides a full range of municipal services, including public safety, which accounts for 40 percent of total costs, street maintenance, parks, recreation and library services. The City's FY01 budget plan anticipates total expenditures of \$1.153 billion and a workforce of 12,079 full-time equivalent (FTE) employees.¹⁵ Two other agencies that have an impact on the City are the City Public Services (CPS) agency and the independent San Antonio Water System (SAWS) which provides water and sewer services.

San Antonio is a home rule city with a Council-Manager form of government. Its council includes a mayor, who represents the City at-large, and ten other members representing single-member districts. All council members serve up to two concurrent two-year terms. The City organization comprises 36 units, including 26 operating departments and 10 offices that are operated under the direction of the City Manager. The mission of the City of San Antonio is to “deliver quality city services and commit to achieve San Antonio's vision of prosperity for our diverse, vibrant and historic community.”

The City Manager, who serves at the pleasure of Council, appoints and supervises all City departments and offices, including the CAO. All assistant city managers and department heads, including the City Attorney, serve at the will of the City Manager. To support the execution of her managerial responsibilities, the City Manager employs a Management Team comprising one Deputy City Manager, three Assistant City Managers, and four Assistants to the City Manager.

B. Profile of Business Contracts

The City's management of business contracts is decentralized with limited central staff support. As a result, there is no central repository of business contract data, such as contract metrics or revenues. There also is no readily available data on the amount or placement of resources committed by the City to processing business contracts.

Moreover, there is no *single* business contract process, but rather a wide variety of business contract management processes. These processes vary not only by department, but by type of contract as well. Our review of selected business contract processes,

¹³ City of San Antonio FY01 Annual Budget Plan

¹⁴ City of San Antonio FY01 Annual Budget Plan

¹⁵ City of San Antonio FY01 Annual Budget Plan

which is presented in a later section on business contract findings and recommendations, better illustrates the full range of business contract processes.

To more clearly understand the magnitude and breadth of the business contract issue facing the City, we tried to determine how many business contracts the City manages, and how much they may be worth (e.g., in terms of potential revenue). Based on preliminary survey data we reviewed, we believe that the City, through its operating departments, manages at least 3,000 business contracts as defined herein with an aggregate value of at least \$300 million.¹⁶ While the City lacks precise aggregate or summary data on business contracts, it is clear that they represent an important part of City operations.

In response to a survey conducted in early 2000 by the City, the City's departments reported that they administer 4,628 contracts, of which 1,315 (28 percent) were business or *other* contracts. However, based on our survey for this project¹⁷, we believe that the actual number of contracts (and business contracts) may be much higher. The seven responding departments¹⁸ reported that they administer 3,008 business contracts representing over \$301 million in value. They also reported that they administer 255 business contracts over \$100,000 in value. Since contracts are fluid—with contracts approved and expiring every week—such surveys only represent snapshots and are no substitute for a citywide database.

What is clear is that business contracts generate substantial revenues. For Fiscal Year 2001, business contracts involving licenses, permits and other City charges are expected to generate about \$37 million in general fund revenues. Other business contracts, such as concession and airline agreements, will contribute over \$9 million to the Alamodome Fund and over \$40 million to the Aviation Fund. In Fiscal Year 2000, food and beverage concession agreements alone generated about \$8.6 million.

While most City departments manage at least some business contracts, a relatively small number of departments are responsible for most business contracts. As illustrated by the table below, three departments—Asset Management, Aviation, and Parks and Recreation—administer nearly 90 percent of all revenue contracts and Community Initiatives manages about 50 percent of the City's grant-related agreements.

¹⁶ Some of the value estimates we obtained include multiple years.

¹⁷ Our survey of City departments was conducted in November 2000.

¹⁸ Three departments did not return surveys.

Summary of Business Contracts by Department

Department	Revenue	Franchise	Grant	Other	Total
Parks & Recreation ¹⁹	196	4	2	106	308
Asset Management	271	0	0	2	273
Aviation	160	0	7	3	170
Community Initiatives	12	0	164	8	184
Cultural Affairs ²⁰	0	0	0	82	82
Health	5	0	48	16	69
Housing & Comm. Dev.	0	0	32	0	32
Convention Facilities	12	0	0	0	12
Economic Development	0	0	11	0	11
Alamodome	11	0	0	1	12
Other Departments	37	6	63	56	162
Totals	704	10	327	274	1,315

In addition, we found that the Alamodome also has significant business contracting activity, if not in terms of the number of contracts it manages, certainly in terms of the dollar value of those business contracts. The five departments with the most significant revenue or grant agreement activity, and the types of revenue contracts they administer, are summarized in the table below.

Departments with Significant Business Contract Activity

Department/Activities	Description of Key Business Contracts
Asset Management – manages real property, negotiates and manages leases and license agreements, and reviews leases negotiated by other departments	Asset Management oversees real property agreements, e.g.: <ul style="list-style-type: none"> • License agreements for encroachment of city property • Inter-exchange license agreements for fiber optic agreements • Lease agreements for space in City facilities or on cellular towers • Miscellaneous contracts (e.g., ATM machine licenses, catering agreements, mowing agreements and vending contracts)
Aviation Department – operates the airport, including 2,600 acres, two terminals, 137,000 feet of cargo space, 3.8 million square feet of apron space and 400 employees	The Aviation Department manages the following contract types: <ul style="list-style-type: none"> • Lease agreements with revenue based on square footage • Concession agreements with revenue based on percent of retail sales (e.g., auto rental, food and beverage and shops in terminals) • Permits with revenue based on permit holder airport operating revenue (e.g., air cargo service providers) • Airline agreements with revenue based on square footage plus defined contract-defined fees (e.g., landing and overnight fees)
Community Initiatives – obtains grant funds and delivers grant-funded social services through joint ventures with external agencies	The Community Initiatives Department identifies, through an RFP process, local agencies that provide social services (e.g., early childhood education or elderly nutrition programs) and then contracts with these entities, called delegate agencies, to deliver services

¹⁹ The 106 "other" contracts in Parks & Recreation include 5 inter-local agreements, 57 street vendor permit agreements (other than the RiverWalk) and 44 license agreements.

²⁰ Cultural Affairs distributes over \$3 million to non-profit art agencies via "other" contracts.

Departments with Significant Business Contract Activity (cont.)

Department/Activities	Description of Key Business Contracts
Parks and Recreation – operates parks, pools and other recreational and cultural facilities and tourist attractions (e.g., Botanical Gardens and Conservatory, River Walk, Hemisfair Park and Market Square)	Parks and Recreation manages three types of revenue contracts: <ul style="list-style-type: none"> • Lease agreements (e.g., public space on River Walk to restaurant operator and office/retail space in Market Square) • License agreements (e.g., access to public property for special events, retail operations or sporting events) • Concession agreements for food and beverage sales on public property (e.g., Tower of the Americas restaurant and golf courses concessions)
Alamodome – manages 160,000 square feet of exhibit floor space and hundreds of events each year from trade shows to rock concerts to professional basketball games	Alamodome's event contracts include large concert and meeting room contracts; event promoters must use the City's exclusive catering contract or pay a fee for another caterer; San Antonio Concessions Inc. (SACI), a San Antonio Spurs subsidiary, has a concession contract with Aramark, the largest contract in terms of gross revenue

In October 1999, the City contracted with Westfield Concessions Management, Inc. to manage food and retail concessions at the airport. The City continues to manage the auto rental concessions.

The CAO is but one municipal office involved with the development, execution and management of business contracts. In fact, while the CAO is involved with most contracts during the drafting, negotiation and execution processes, its level of involvement with these processes varies widely, depending on the contract and originating department. The contract monitoring process is largely decentralized with the CAO having little, if any, role with business contracts after they have been executed.

Most City departments do not have full-time staff for processing business contracts. However, the departments that manage a high volume of business contracts dedicate at least some staff to contract planning, approval and monitoring. As indicated by the table below, these departments dedicate about 33 full-time equivalent employees (FTEs) to business contract activities. These employees spend about 50 percent of their time on contract monitoring activities.

Business Contract Management Staffing by Department

Department/Employee Position	Total FTEs	FTEs by Function		
		Planning	Approval	Monitoring
Alamodome	3.10	0.30	0.85	1.95
Asset Management	5.00	0.60	1.70	2.70
Aviation	5.00	1.20	1.40	2.40
Community Initiatives	6.00	0.90	0.90	4.20
Convention Center Facilities	6.60	0.70	5.65	0.25
Economic Development	4.30	0.60	0.60	3.10
Parks and Recreation	3.00	0.95	0.15	1.90
Total – All Respondents	33.00	5.25	11.25	16.50

Note: The planning process includes planning, solicitation, selection and award. The approval process includes negotiation and execution. The monitoring process includes tracking, modification and termination.

Since the above data is limited to the departments responding to our survey, it can be assumed that additional City staff resources are involved with managing business contracts.

C. Profile of City Attorney's Office

The CAO serves as the City's chief legal advisor, representing the City in all litigation and assisting City entities²¹ with a wide variety of transactions, including ordinances, contracts and legal opinions. It is organized into seven divisions under the City Attorney as summarized below:

- Administration – drafts ordinances, oversees ethics code, attends civil service and police and fire arbitration hearings, and handles sexual harassment matters
- Litigation – represents City in Municipal Court, resolves City code cases, supervises other cases and manages Domestic Violence Early Intervention grant program; this division is divided into two sections—(1) General Liability and Workers Compensation and (2) Municipal Courts
- Development & Fiscal – handles planning, zoning and development matters as well as public finance and other fiscal matters and serves as the liaison to the San Antonio Water System (SAWS) and City Public Service (CPS)
- Government & Business – reviews new legislation, handles inter-local and tax increment finance matters, drafts franchise agreements, serves as the liaison to the VIA Metropolitan Transit Authority and handles other special issues (e.g., Alamodome and Convention Center expansion)
- Community & Organization – represents community and human service departments (e.g., Housing, Neighborhood Action, Library, Parks and Health)
- Contract – established recently to provide assistance on major contracts (e.g., Brooks AFB, collective bargaining and advertising contracts) and compile a manual on standard contract provisions
- Risk Management – administers the City's risk management program, including the Self-Insured Liability and Worker's Compensation programs

The CAO is authorized to spend \$26.9 million this fiscal year. As illustrated by the table below, only \$4.1 million (or 15 percent of total costs) will be for traditional CAO services to general fund departments. The other 85 percent of CAO costs will be for legal services to Worker's Compensation (WC), Liability Fund (LF), Community Development Block Grant (CDBG) and Categorical Grant (CG) funds.

²¹ The CAO advises 50 boards and commissions, 8 ad hoc committees and 4 Council subcommittees.

Proposed CAO Expenditures By Fund (000s) – FY01

Expenditure Object Class	GF	WC	LF	CDBG	CG	Total
Personal Services	\$3,272	\$1,338	\$1,035	\$223	\$173	\$6,041
Contractual Services	653	1,442	1,079	69	3	3,246
Commodities	63	64	28	4	3	162
Other Expenditures	60	8,348	7,556	0	65	16,029
Capital Outlay	47	533	21	8	0	609
Transfers	0	827	36	0	0	863
Totals	\$4,095	\$12,552	\$9,755	\$304	\$244	\$26,950

Note: GF = General Fund, WC = Worker's Compensation, LF = Liability Fund, CDBG = Community Development Block Grant Fund and CG = Categorical Grant

The CAO has 113 authorized positions for the current budget year. As reflected by the table below, attorneys account for nearly 49 percent of all authorized positions while paralegals and legal secretaries together account for another 19 percent of positions.

Authorized CAO Positions By Fund – FY2000-01

Authorized Position	GF	W/C	LF	CDBG	Total
City Attorney	1	0	0	0	1
First Asst. City Attorney	1	0	0	0	1
Deputy City Attorney	3	2	0	0	5
Asst. City Attorney IV	1	0	2	0	3
Asst. City Attorney III	17	1	4	1	23
Asst. City Attorney II	10	0	2	1	13
Asst. City Attorney I	9	0	0	0	9
Manager (Adm. Services & Risk)	1	1	0	0	2
Safety Program Supervisor/Specialist	0	4	0	0	4
Supervisor (Claims, Acctg. & W/C)	0	2	1	0	3
Claims Examiner/Specialist	0	1	2	0	3
Special Projects Coordinator	0	2	1	0	3
Accountant II/Auditor	0	3	0	0	3
Account Clerk II	0	2	1	0	3
Executive Secretary/Adm. Aide	1	2	0	0	3
Administrative Asst. II/I	2	1	0	0	3
Paralegal	6	2	2	1	11
Legal Secretary	7	1	2	1	11
Secretary II/I	4	1	0	1	6
Other (Training Officer, Mgt. Analyst)	0	2	1	0	3
Totals	63	27	18	5	113

Note: GF = General Fund, W/C = Worker's Compensation, LF = Liability Fund and CD = Community Development Block Grant Fund

Transfers to the General Fund from five other funds (i.e., Hotel/Motel, Convention Center Expansion, Solid Waste, Stormwater and Aviation) support 1 and 2/3 city attorney positions.

The City has made additional investments in the CAO in recent years. The City Council's decision to increase its investment in legal services was motivated, at least in part, by a perception that CAO staffing levels were not keeping pace with the office's

workload demands. As indicated by the table below, overall authorized CAO funded positions increased by 18 percent from 1996 to 2000.

Authorized CAO Positions By Year (All Funds) – 1996-2000

Authorized Positions	1996	1997	1998	1999	2000
City Attorney	1	1	1	1	1
First Asst. City Attorney	1	1	1	1	1
Deputy City Attorney	8	4	4	4	4
Asst. City Attorney IV	0	3	3	3	3
Asst. City Attorney III	0	17	18	20	23
Asst. City Attorney II	18	10	11	10	13
Asst. City Attorney I	18	9	10	10	10
Administrative Services Manager	1	1	1	1	1
Executive Secretary	1	1	1	1	1
Administrative Asst. II/I	3	2	2	2	2
Paralegal	9	8	9	9	11
Legal Secretaries	8	10	10	10	11
Secretary II/I	5	5	5	5	5
Totals	73	72	76	77	86

Note: Position data from the Authorized Position Register, reported for October of each year. Data for 2000 is estimated; all other years are actual. RMD positions are excluded.

During the same time period, from FY96 through FY00, the CAO's workload increased as well (see table below). For example, the number of cases docketed by Municipal Court increased by over 42 percent. While the number of lawsuits handled by the CAO declined, the number of formal opinions issued by the CAO increased by 30 percent. The number of ordinances prepared and contract grievances filed remained relatively static.

CAO Workload Indicators By Year – FY96-00

Performance Measure	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	FY 1999-00
Cases Set on Docket-Municipal Court	33,047	31,427	38,421	44,196	47,139
Cases Resolved by Prosecutors	31,395	29,856	36,499	41,987	44,783
New Lawsuits Filed annually - Litigation	182	165	126	126	140
Lawsuits Pending	265	260	252	207	223
Lawsuits Closed annually - Litigation	183	170	37	105	92
Trials Conducted - Litigation	19	20	13	11	15
Formal Legal Written Opinions	342	386	395	417	445
Informal Verbal Opinions	3,793	3,982	3,997	4,020	4,134
Ordinances Prepared	1,949	1,835	1,892	2,008	1,930
Admin. Hearings/Contract Grievances Filed	235	235	259	224	259

Note: FY00 data is estimated; all other years are actual.

From FY96 through FY00, the CAO appears to have maintained many of its measurable performance levels. While the percent of formal opinions issued within ten days declined, the CAO's other performance ratings either increased slightly or remained stable.

Other CAO Performance Indicators By Year – FY96-00

Performance Measure	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	FY 1999-00
Favorable Lawsuit Disposition Rate	90%	85%	90%	90%	92%
Municipal Court Conviction Rate	N/A	86%	88%	88%	90%
Informal opinions issued within 3 days	95%	96%	96%	96%	97%
Formal opinions issued within 10 days	90%	91%	90%	91%	85%
Outside Counsel Ratio for New Cases	13%	7%	6%	6%	11%

Note: FY00 data is estimated; all other years are actual.

The percent of new cases assigned to outside counsel appears to be on the rise after three years of decline. However, it is unclear to what extent this ratio reflects the CAO's use of outside counsel. The outside counsel issue is addressed in more detail in the section on CAO findings and recommendations.

As noted earlier, the City began to address performance issues associated with the CAO in early 2000. At the City Manager's request, the City Attorney prepared an action plan for improving the effectiveness and efficiency of the CAO. The CAO's action plan included the following recommendations:

- Create a Contracts Division with one Deputy City Attorney and four attorneys to develop and negotiate essential contracts²²
- Prepare a standard contract form and contract checklist for all essential contracts²³
- Create a General Counsel position, add one Deputy City Attorney and four attorney positions and increase office space
- Develop departmental evaluation forms to obtain feedback from clients
- Increase the CLE credit from \$120 to \$350 per year
- Offer performance pay increases totaling \$18,000 to top performing employees
- Transfer the Risk Management Division from the CAO to another department
- Amend the civil service system to exempt attorneys from the classified service

The City Attorney also recommended continuing the City's commitment to using outside counsel. Subsequently, after the City Manager recommended approval to the City Council, the City moved forward with the implementation of CAO's proposed action plan, and the Council authorized a performance review of the CAO.

D. Profile of Risk Management Division

The Risk Management Division, and its 22 employees, has reported to the City Attorney for nearly four years. Previously, it reported to the Finance Director.

The Risk Management Division coordinates the following functions:

²² This recommendation was based on the assumption that these five attorney positions would be replaced after the Performance Review.

²³ The contract checklist would include all contract elements needed for monitoring that contract (e.g., revenue estimates, required reports, timelines, performance goals and performance bond renewals).

- Oversee liability and worker compensation claims
- Oversee the self-insurance fund, including maintaining proper fund reserves
- Monitor insurance policies (e.g., excess liability and worker compensation, airport, health district physician and police helicopter fleet policies)
- Manage large insurance contracts

Large insurance contracts include the worker compensation third party administration, medical cost containment and Convention Center Expansion insurance contracts.

In 1996, the City established a Claims Board to settle claims below \$50,000 and authorized the City Attorney to settle claims below \$15,000. Before then, the City Council had to approve any settlement over \$5,000.

III. Business Contract Findings and Recommendations

A. Overview

Despite advances in many other arenas of public administration, public sector entities have been relatively slow to reform their contract management practices, particularly those related to business contracts.²⁴ In contrast to such areas as finance, budgeting and procurement, contract management has received scant attention as a public sector management discipline, and has produced relatively limited innovation.

In San Antonio, the business contract management processes are similar to those employed by other large local governments. They are decentralized, reactive and antiquated. The most critical deficiency concerning the City's approach to business contract management is its lack of citywide standards or guidelines. This is due to several factors, including the lack of a central staff support unit for contract management and inconsistent departmental resources and capabilities for contract management. As a result of this lack of citywide standards or guidelines, the effectiveness and efficiency of departmental contract processes, including planning, solicitation, negotiation, approval and monitoring, varies considerably by department.

This project was limited to a review of business contracts, including concession, lease, franchise and public-private partnership agreements. However, during the course of our work, it became clear that we needed to develop strategies that could strengthen the City's management of all contracts. To improve the City's contract management processes, we recommend the following six strategies:

- Establish a central business contract support unit
- Establish citywide business contract management standards
- Implement a structured planning and solicitation process for business contracts
- Streamline the business contract negotiation and approval process
- Institute more rigorous business contract monitoring practices
- Expand and enhance business contract management technology

Our findings and recommendations pertaining to the business contract management processes are discussed in more detail below. Our findings and recommendations concerning the CAO are set forth in the next section of this report.

B. Strategic Vision for Business Contract Process

At a strategic visioning session held in October 2000, the Ad Hoc Oversight Committee developed a vision statement for a model business contract management process. This vision statement envisions an effective and efficient business contract management process that is based on exemplary practices employed by other large cities, yet enables

²⁴ Business contracts are defined for this project as revenue-generating and public-private partnership contracts.

the City to meet its performance objectives with minimal risk. Its vision statement for the business contract management process is summarized in the table below.

Strategic Vision Statement for Business Contract Process

Strategic Area	Strategic Vision Elements & Characteristics
Planning & Needs Assessment	<ul style="list-style-type: none"> √ Ability to distinguish contracts by level of risk and complexity √ Standard, simplified process for small, one-time or low-risk contracts √ Consolidation of multiple funding sources where appropriate √ Thorough dialogue between CAO and departments about contract terms and business issues early in planning process √ Clearly defined roles and responsibilities for CAO and departments, including involvement of appropriate fiscal and business expertise throughout process √ Early assessment of costs and benefits of outside counsel
Solicitation, Evaluation, & Selection	<ul style="list-style-type: none"> √ Clear solicitation guidelines for major contract types, including suggested responsibility assignments, time lines and proposal evaluation criteria √ Ability to use multi-year contracts with performance contingencies and multi-year appropriations where merited √ Sufficient flexibility and authority for department heads
Approval, Negotiation & Execution	<ul style="list-style-type: none"> √ Standard, consistent and clearly defined contract language where feasible, including simple indemnification language, to minimize misinterpretations between the CAO, City departments and contractors √ High level of support from CAO during contract negotiations, including clear assignment of lead responsibility for each contract to one lawyer √ Effective communications between departments and CAO regarding terms and language of contract √ Adequate department access to business expertise from CAO or other source during contract negotiations
Contract Monitoring & Controls	<ul style="list-style-type: none"> √ Standard contract monitoring process, including checklists, controls and performance measures, with adequate training and possible centralization √ Clear assignment of monitoring responsibility for every contract, especially for contracts involving multiple departments √ Clear guidelines for involving CAO during monitoring phase √ Effective and rigorous documentation of contract objectives, changes, history and interpretations to ease transition for new staff √ Standard, effective and efficient city-wide contract billing process (consideration of centralized process if necessary) √ Effective use of random audits or reviews (internal/external) and clear responsibility assignments for conducting audits or reviews √ Consistent contract termination language √ Clear departmental responsibility for initiating contract termination
Technology Utilization	<ul style="list-style-type: none"> √ Automated contract/project management and tracking system √ On-line, real-time contract database/keyword search capabilities √ Automated link to Finance for vendor payments and web-based reports and full utilization of Financial Management System accounts receivable capabilities

The Ad Hoc Oversight Committee identified some potential barriers to attaining its strategic vision for the City's business contract process. For example, many observers believe that the number and complexity of contracts managed by the City will continue to increase, thereby increasing demands on internal staff and systems to keep pace. This, in turn, could increase the City's exposure to higher costs and liability claims. The lack of

adequate contract management resources and standardized, citywide contract management systems and processes will only exacerbate this exposure.

The contract management environment is likely to change in the coming years. Contracts will be increasingly performance-based. E-commerce will be responsible for a rising share of contract transactions. Relationships with contractors will become more complicated (e.g., joint ventures), with mounting pressure for systems designed to prevent fraud. Contract law will change. A dynamic environment will only serve to heighten the need for effective enterprise-wide contract management systems.

C. Key Business Contract Findings

1. Organizational

The City lacks central oversight or coordination of its business contracts. The purchasing function is centralized, but the contracting function is not. Operating departments are solely responsible for managing these contracts without the benefit of adequate citywide policies or responsibility guidelines. This has led to at least some situations where the ultimate responsibility for managing a given contract has been unclear and, in instances where contract disputes have arisen, some internal *finger pointing* as well.

While the City's operating departments share this concern about the lack of central business contract oversight, they remain unanimous in their view that they should have ultimate responsibility for monitoring their business contracts. They strongly oppose a central staff unit (e.g., a traditional purchasing unit) to serve as a gatekeeper for initiating business contracts or a central unit to monitor their contracts. However, they would like clearer guidelines for assigning contract management responsibility.

While we share some departmental concerns about a central office for managing business contracts, we strongly believe that some central support capability is needed for business contract management. The City has done this in other areas. For instance, in its effort to improve its cash management practices last year, the City created an accounts receivable section to "*monitor and collect receivables, ensure timely remittance of revenues and provide accurate presentation.*"²⁵ The Public Works Department established a Right-of-Way (ROW) management unit to improve the coordination of ROW contracts.

Some departments (e.g., Parks and Recreation) have contract officers, but they generally believe that they lack adequate resources to manage their business contracts, and are particularly concerned about the adequacy of their monitoring resources. Some employees responding to our surveys recommend the hiring of additional business contract managers as well as more staff to monitor contracts. They also would like access to greater expertise to help them plan, procure, negotiate and monitor business contracts. They also believe that the CAO needs more staffing resources for drafting and negotiating business contracts²⁶.

²⁵ According to the Fiscal Year 2001 budget

²⁶ This is addressed in our CAO findings and recommendations.

According to our interviews, the City's Community Development Department is so busy processing paperwork and assisting the delegate agencies that it is unable to conduct sufficient program audits or other monitoring activities. Reportedly, the federal Housing and Urban Development (HUD) agency recently cited the City's Community Development Department for understaffing. In response, the Community Development Director hired one new program auditor.

We also found that the City does not make a sufficient commitment to developing the capabilities of its contract management staff. The City lacks a contract management career track as well as a structured citywide training program for contract management staff. Departmental employees who responded to our surveys reported that training on proper contract management techniques is inadequate. They also cited a need for training on contract negotiation and monitoring techniques.

2. Contract Standards and Guidelines

State laws provide little guidance for managing business contracts. Section 252 of the Texas Local Government Code requires formal (sealed and advertised) competitive bids for goods and some services of \$15,000 or more²⁷ and informal bids for contracts from \$3,000 to \$15,000. State law also requires that contracts be awarded to the "lowest responsible bidder whose proposal is determined to be the most advantageous to the municipality considering the relative importance of price and the other evaluation factors included in the request for proposals." It is unclear to what extent this provision applies to business contracts.

Local law also provides limited citywide policies for business contracts. The City charter (Section 97) requires Council approval for all contracts, but also authorizes departments to approve purchases under \$3,000. A recent charter amendment tied this approval threshold to state law. As a result, Council may delegate administrative authority to departments to execute contracts under \$15,000. In addition, the City's SBDEA ordinance requires an RFP for most contracts over \$25,000. Since most business contracts involve revenues that can be difficult to estimate (rather than more precise costs), the relevance of such approval thresholds for business contracts is unclear. In any event, local law provides very little guidance on how to manage such contracts.

The City lacks citywide standards for managing business contracts, especially after the contract is executed. Once the City has a signed contract, there is no clear policy or procedure delineating the responsibilities for the appropriate department.

This lack of guidelines or standards extends to both processes and contract provisions. For example, the insurance requirements vary widely without a clear pattern. In our review of contract documentation, general liability insurance requirements ranged from a \$1 million single limit per occurrence to a requirement of \$5 million per occurrence. The

²⁷ There are exceptions for professional or planning services, emergencies, real property sole source and inter-local agreements.

amount of insurance required did not appear to bear any relationship to the underlying contract. Additionally, some insurance provisions contain a waiver of subrogation clause, whereas others do not. Some insurance provisions contain requirements that the insurer must meet (e.g., the City be named as an additional insured), but others do not.

The indemnification provisions also differ substantially. In some contracts, the other contracting party merely indemnifies the City from the contractor's negligence, but in other indemnification provisions, it indemnifies the City from the City's own negligence. Some indemnification provisions have a provision for apportionment of comparative fault, but others do not. The reasons for these variances are unclear.

Our review of contract documentation revealed little consistency among the contracts on simple boilerplate issues. Boilerplate provisions are those that are generally common from contract to contract, and include such issues as assignment, severability, governing law and notices. Also, Texas has a conflict of interest provision, and the City of San Antonio has an ethics provision. Additionally, some contracts refer to the Texas conflict of interest provision, while others refer only to the City's ethics requirements.

Business contract processes not only vary by function (e.g., solicitation, evaluation, negotiation, execution and monitoring), but also by department. In some cases, these processes vary within departments. This is due at least in part to the inherent differences among different types of business contracts. For example, Asset Management's lease and cellular tower contracts employ different processes partly because the underlying objectives of the contracts vary.

Some argue that business contracts are so different in nature and purpose that they defy the application of standard practices and systems. We disagree. There are several process activities that are common to all business contracts (e.g., contract initiation, review and approval, and monitoring). No matter how much individual business contracts vary in scope or type, most of them can be initiated, approved and monitored using similar management processes and systems. For example, the Asset Management Department has led the way in standardizing lease contract management practices and systems for several departments. The Aviation Department has developed a procedures manual that could be used as a template for other departments.

Standardization is occurring with franchise agreements as well. The City, led by the Finance Department, is well on its way toward the adoption of a model cable ordinance to maximize consistency among agreements. When the City revises its franchise contract with Time Warner later this year (it expires in November 2003), it plans to develop a model cable franchise agreement. It has hired outside counsel with appropriate expertise to develop a model ordinance that will address Internet services. The City also has adopted a Right-of-Way (ROW) ordinance to clarify the City's policies for road repairs, permit issuance and performance penalties.

The City Manager's November 10, 1998 memo on contract management entitled "Procedural Changes" (commonly known as the *Magna Carta* memo) was a beneficial

step toward citywide contract standardization. This directive contained several new policies, including the increased use of standard contract provisions, the attachment of contracts in substantial final form to the ordinance prior to approval, a 60-day sunset provision for negotiations, and a peer review and signature by appropriate officials (e.g., City Attorney and department director) before final contract execution. The CAO has drafted a standard contract provisions notebook, including an internal memo on how attorneys will handle amendments, but this notebook is tailored to attorneys rather than contract management staff.

The City has not done enough to explore the common requirements of such process activities, standardize similar activities and improve their efficiency. This lack of a coherent, citywide approach to business contract management is manifested in many ways. Inconsistent or ambiguous responsibility assignments may undermine accountability. Unnecessary variations in departmental business contract processes may lengthen processing cycles or increase the citywide unit costs of processing business contracts.

The lack of standard citywide policies for concession operations makes it more difficult to communicate clear performance expectations to concessionaires and other contractors. Unnecessary variations in contract forms, documents, terms and provisions make contract interpretation and administration more difficult. Redundant contract documentation and filing systems increase internal operating costs. Differences in contract systems and related technology can undermine file security.

3. Planning and Solicitation

The City's operating departments strive to comply with state contract bidding laws and other applicable legal restrictions, but these laws provide minimal guidance. Moreover, the City has done little to institute more effective and efficient citywide planning and solicitation (i.e., bid/proposal) guidelines. Some of our other key findings associated with contract planning and solicitation processes are outlined below.

Individual departments are responsible for establishing contract procedures for the particular types of contracts administered. In the absence of a cohesive, citywide approach to business contract management, departments tend to be reactive, focusing their resources on solicitations as they arise. Thus, little, if any, planning occurs in connection with business contracts. For example, even though maintaining a large vendor base is costly, there is little evidence of departments trying to consolidate similar contracts.

Based on the limited survey responses we received from contractors, it appears that contractors are satisfied with the departmental solicitation processes for business contracts. About 70 percent of the contractors who responded expressed a high level of satisfaction with the competitiveness and efficiency of the solicitation process. About 60 percent expressed a high level of satisfaction with the clarity of Request for Bids (RFB), Request for Proposal (RFP) and business contract forms employed by City departments.

A few contractors stated that the City needs to streamline the solicitation process and consider the greater use of multi-year contracts.

The City employees who provided input reported less favorable views about the City's contract planning and solicitation processes. For example, most department management respondents expressed a low level of satisfaction with the thoroughness of contract planning. Most staff respondents indicated that business contract planning should be more effectively integrated with the budget process (e.g., require departments to identify anticipated business contracts as part of the budget process).

There were several complaints about the RFP process (e.g., the lack of standard templates and the use of different scoring processes and Council presentation formats). Many departmental staff expressed concerns about contract awards based on subjective considerations, and the lack of guidance for proposal evaluation and scoring. In our contract process review, we found no evidence of departments conducting formal risk assessments before renewing multi-year contracts.

The limited number of uniform policies and procedures for soliciting business contract not only promotes inefficiencies in the solicitation process, but also engenders contract disputes. Also, variations in the contract solicitation process among City departments can be inherently counterproductive and leave the City vulnerable to charges of unfairness.

4. Contract Negotiation and Approval

Under the City's decentralized model for business contract management, each City department assumes primary responsibility for initiating and negotiating business contracts, securing CAO review and obtaining City Council approval. The City Clerk's Office is supposed to be the central repository for all executed contracts, but there is no mechanism to ensure that all contracts are indeed stored there.

Our limited survey of contractors disclosed other management issues associated with the business contract management process. Those issues include the following:

- Limited departmental authority to award or modify business contracts;
- Inadequate or untimely information from the City during negotiations; and
- The inadequate involvement of legal counsel early in the negotiation cycle.

Our departmental survey results revealed other issues pertaining to the contract negotiation and approval processes, including the following:

- Excessive time demands on departments during negotiation and approval;
- Untimely legal counsel during contract reviews;
- Insufficient specialized expertise for negotiating complex contracts; and
- The protracted length of the contract negotiation process.

During our interviews and process mapping, we confirmed that the City's business contract negotiation and approval processes can be inefficient and slow. For example, virtually all business contracts, with the exception of those below \$3,000, must be approved by City Council. The processing of so many business contracts through a single funnel not only slows the overall approval process, but also compels departments to concentrate an inordinate share of their contract management resources on the approval stage. This, in turn, limits the staff resources available for contract monitoring.

Some grant-related agreements may require an excessive number of Council approvals (including separate approvals for grant application, grant acceptance and contract execution). Some contract negotiations, such as those involving multiple departments, are not well planned, resulting in an inefficient use of City resources (e.g., too many City attorneys at negotiation sessions).

The City does not have a streamlined contract approval process for small, routine contracts. In other words, it has not developed a set of simple procedures and forms for contracts that entail minimal risk. Its business contract boilerplate provisions (e.g., revenue verification and record inspection provisions) are not calibrated to contract type. We found that such provisions often vary substantially from one contract to the next, but these variations seem unrelated to contract size or risk. Complicated, high-risk contracts need more demanding provisions (e.g., formal audit by CPA or City inspection of books on 72 hours notice) than small, routine contracts. Streamlining the contract approval process, including simple contract forms and provisions, could improve workflow, accelerate contract execution and improve relations with private businesses.

5. Contract Monitoring

The City's monitoring practices for business contracts are decentralized and inconsistent. While some departments have instituted relatively effective business contract monitoring practices, other departments would benefit immensely from citywide policies and guidelines. The most significant opportunities for improving contract monitoring practices involve four issues: 1) performance measures, 2) contract monitoring practices, 3) contract audit/review frequency and 4) contract enforcement.

Although the City employs performance measures in some contracts, it has not adopted performance-based contracting principles as a citywide philosophy or standard. As a result, many contracts (e.g., the airport concession management contract) lack clear, verifiable and enforceable performance measures, especially non-fiscal performance measures. This can make it more difficult for the City to terminate a contract or seek some other remedy in the event that the contractor fails to provide the expected level of revenues and other services.

Our surveys revealed contractor and departmental concerns about inadequate performance measures and ineffective communications thereof. The inadequate documentation of performance expectations can heighten the risk of contract disputes, and reduce contractor accountability. For example, even when the City's expectation is

to share all revenues derived from a concession, ambiguous performance standards can give rise to different contract interpretations regarding such issues as the definition of gross revenue.

Some departments have crafted effective performance measures for business contracts that could be adapted to other types of business contracts. For example, one of the City's airline agreements provides that, if the airline sublets any of its leased property for a fee in excess of what is charged by the City, it shall remit the difference (less an administrative fee). Such provisions enable the City to capture a portion of new revenue sources and should be emulated to the extent practical.

The quality of monitoring practices varies widely among departments. For example, contract monitoring reports (e.g., work-in-progress, billing, financial and performance reports) are inconsistent. Contract monitoring and reporting systems also vary significantly. While several departments monitor concession agreements in an effective manner, model citywide concession contract monitoring guidelines would help ensure that all departments employ effective monitoring practices.

Our survey of City staff revealed serious concerns about the frequency of contract monitoring. Many staff believe that business contract audits or reviews are either too infrequent or ineffective. Our site visits supported this contention. For example, our review of concession agreements disclosed that concession contract audits and reviews (including verifications of caterer or concessionaire gross revenue) are not as frequent or diligent as they should be. We also found that, while the Internal Review Office conducts franchise audits, it lacks an adequate training program for those who audit or review right-of-way (ROW) agreements for compliance with federal and state law.

There is more than one potential cause for this problem. Of the department employees who responded to our survey, 82 percent reported that staffing resources for monitoring contracts are insufficient. Another 50 percent of the staff respondents cited a need for more clearly-defined monitoring responsibilities. Generally, our interviews revealed that the demands associated with processing new agreements may reduce the available staff time for monitoring existing agreements.

A related issue is the ability of the City's Internal Review Office to conduct independent reviews of business contracts. In San Antonio, unlike other major cities in Texas, the internal audit function reports to the City Manager, rather than the City Council. While we found no evidence that the Internal Review Office's independence or effectiveness has been hindered by the current reporting relationship, the perception of independence (or lack thereof) looms as a potential issue for business contracts for which top City management has had significant direct responsibility.

Our survey of City staff also revealed some concerns about contract enforcement. About 56 percent of the respondents expressed low satisfaction with departmental contract enforcement capabilities (e.g., their ability to recover fees from contractors). They also cited limited sanctions (e.g., debarment) for poorly-performing contractors.

6. Technology

San Antonio lacks an effective citywide *system* for tracking business contracts in their early stages of development, or for monitoring them when they are executed. The Executive Project Management System (EPMS) enables the City Manager's Office to track some projects up to the point at which they are executed, but not during the monitoring cycle. In any event, its contract management functionality is limited.

The City's various operating departments rely on a series of ad hoc approaches that have evolved over time to meet their contract management needs. Many City departments have developed "niche" databases or spreadsheets to track contracts, but these exist in isolation from one another. In the aggregate, this represents an inefficient and ineffective approach for ensuring good citywide contract management practices.

Without a single, uniform or enterprise-wide contract tracking system, City and department management cannot verify the status of business contracts at any point in time. The lack of such a system further limits the ability of departments to detect potentially problematic contract situations, which in turn increases the potential risks to the City of contract abuses and disputes. The planned Departmental Project Management System (DPMS) could address some of these needs.

During our interviews and process mapping, we also noted other technology issues that need to be addressed, including the following:

- Many departments lack timely access to contract data (e.g., concession sales, accounts receivable, and national credit and business information database);
- Some business contract processes (e.g., the ROW permit process²⁸) are not fully or effectively automated;
- Departments lack effective access to relevant systems (e.g., inventory system);
- Departments lack the ability to electronically debit funds for rentals on high-risk accounts; and
- Some business contract filing systems are redundant.

Our review of the City's cash management system disclosed some opportunities for improving cash management technology for business contracts. The City uses a computerized balance reporting system offered by its depository bank to access account balance, deposits and check clearing information on a daily basis. The system is used to determine the City's cash position each day so that funds can be invested appropriately to maximize interest income and meet future cash needs. It is not tailored to the needs of revenue-generating business contracts.

There have been some notable efforts to improve citywide contract systems, such as the Asset Management Department's lease data base initiative. However, a more concerted

²⁸ The Public Works Department recognizes that automating the ROW permit process will improve its ability to serve and monitor permit applicants and is in the process of automating this process.

effort is needed for all revenue contracts. A citywide contract database and tracking system would enable appropriate employees to track contract status (e.g., identifying red flags or required corrective actions) more quickly and reliably. Modern document workflow and imaging systems would enable staff to find critical contract documents (e.g., bond and insurance documents) via the City's Intranet (e.g., COSAWeb).

D. Recommended Business Contract Strategies

Strategy No. 1 - Establish a central business contract support unit.

As outlined in the strategy templates set forth in Appendix E, this strategy includes four tactics as follows:

- Establish a new citywide Contract Services Unit
- Establish new contract specialist positions and develop a citywide contract management career track for contract specialists
- Establish an interdepartmental contract services team to promote business contract process improvement and training initiatives
- Develop a citywide staffing plan for managing business contracts

Strategy 1 and the recommended tactics will improve citywide accountability over business contracts and strengthen the ability of operating departments to manage and monitor the business contracts for which they are responsible. This strategy strikes an appropriate balance between centralized and decentralized contract administration models. A decentralized contract administration model tends to limit information sharing, and often results in inconsistent practices and less effective enforcement. In contrast, a centralized model, with a central contracting office, would likely increase bureaucracy and reduce responsiveness to agency needs.

The proposed Contract Services Unit's primary role will be to develop and promote citywide standards and systems for improving the management of business contracts. Its mission will be to improve citywide business contract policies, practices, information sharing and quality assurance activities. In doing so, its goals will not be to centralize the processing and monitoring of contracts, but rather to support the effective decentralization of business contract management operations.

The objective of this strategy is to establish contract management as "a strategic [citywide] management discipline ... to manage customer ... expectations and [contractor] relationships, control risk and cost, and contribute to organizational success."²⁹ Our recommended tactics for this strategy are discussed in more detail below.

²⁹ Daniel O'Brien, "A Matter of Perspective," *Contract Management*, March 2000, p.4.

1. Establish a new citywide Contract Services Unit.

The City should establish a balanced contract management model with sufficient checks and balances to ensure that business contracts are managed by operating departments in accordance with clearly-articulated Citywide contract management policies. This model should be designed around the following principles:

- Operating departments will have primary responsibility for planning, procuring, executing, monitoring, managing and closing out business contracts;
- The City Attorney's Office (CAO) will have sole responsibility for ensuring that all business contracts (and related legal documents) are drafted, executed and modified in accordance with applicable law and sound legal practice;
- A new Contract Services Unit will be charged with developing and coordinating a Citywide management system for business contracts, and assisting operating departments with their efforts to manage their respective business contracts in accordance with established Citywide business contract management policies; and
- The Internal Review Office should be responsible for conducting ad hoc contract revenue audits and post-transaction contract audits.

The operating departments should continue to assume primary responsibility for initiating, executing and managing those business contracts that are programmatically related to their missions, especially when they possess the requisite expertise (e.g., Aviation, Parks and Economic Development). The operating departments should continue to manage business contracts from solicitation to termination. For example, the Aviation Department should continue to manage its facility contracts. Where practical, operating departments with the requisite resources may also be assigned responsibility for monitoring selected contract types or performing other contract management functions on a Citywide basis (e.g., Economic Development monitors tax abatements and wage compliance).

The CAO should continue to assume sole responsibility for ensuring that all business contracts approved by the City Council comply with applicable law, promote the City's legal interests and minimize liability. The CAO should be responsible for drafting contracts, reviewing contracts, controlling contract work-in-progress documents, supporting negotiations (the operating department should generally take the lead in business contract negotiations) and providing other legal support throughout the contract management process cycle.

No business contract should be approved (or even presented to City Council for approval), executed or modified without prior CAO review (the CAO's review may be limited to form for small, routine contracts). The CAO may, upon the request of its client departments, provide broader counsel on business contract issues, but this should in no way abrogate the operating department's responsibility for ensuring that the business contract is managed effectively through its entire term.

The new component of the proposed contract management model—the Contract Services Unit—should serve as a central business contract management support unit for promoting the City’s core values for business contracts. This role should entail developing, implementing and coordinating Citywide contract management policies, systems and procedures and providing technical assistance to operating departments as requested. The role of this unit is described in more detail below.

The proposed Contract Services Unit should serve as the lead central support staff unit for assisting the operating departments in planning, soliciting, executing and monitoring business contracts. Its role will be more similar to that of the Budget & Performance Assessment Department than that of the Purchasing & General Services Department. In other words, it will function more as a business contract advisor providing in-house consulting services, relevant business information and other assistance to operating departments than as a controller or gatekeeper for individual contract transactions.

The Contract Services Unit’s primary role will be to facilitate the continuous improvement of the City’s business contract management processes. To that end, it will take the lead in developing formal citywide policies, procedures and systems for business contracts. In short, it will take the lead in implementing the recommended business contract management improvement strategies outlined later in this report.

The Contract Services Unit’s ultimate role will vary depending on the complexity of the contract and the resources of the operating department. However, for most business contracts, the Contract Services Unit will merely serve as a consulting resource to operating departments. This assistance could include the following services:

- Develop business planning capacity to identify and evaluate potential revenue-generating, outsourcing or partnership opportunities, perform risk assessments and track industry trends
- Identify and recruit potential business contractors for services with limited suppliers or opportunities for regional joint ventures
- Provide assistance on proformas and financial projections for revenue contracts during the planning stage (i.e., before the RFP is issued)
- Review performance measures and monitoring plans for business contracts
- Develop RFP/RFQ documents and serve on selection committees for concession agreements and other major business contracts
- Participate in the negotiation of contracts for multi-contract sites (e.g., Brackenridge Park) or other contracts for which operating departments request assistance
- Develop a citywide database and standard reporting format for monitoring business contracts and provide periodic reporting from the composite database for the benefit of the departments and Management Team
- Assist operating departments with developing and maintaining core business contract management competencies and ensuring that there are sufficient staff in operating departments to manage contracts

In some cases, where the operating department lacks sufficient resources or recognizes a potential conflict of interest, the operating department could request the new Contract Services Unit to serve as a contract coordinator (like a property manager), negotiator or monitor. In virtually all cases, regardless of the assistance provided by the Contract Services Unit, the operating department would retain lead responsibility for managing the business contract.

The function of the new unit will be to strengthen, rather than usurp, the proper role of operating departments in managing their respective business contracts. However, there may be some extenuating circumstances that justify assigning lead responsibility for a business contract to the new Contract Services Unit. For example, the City Manager could ask the Contract Services Unit to review (approve) business contracts that meet certain criteria (e.g., exceed \$250,000 per year in revenues, exceed five years in duration, involve multiple departments, offer an opportunity for consolidating multiple similar contracts across departments or pose significant risk).

To illustrate, the Contract Services Unit could assume lead responsibility for any citywide contracts or projects that require significant coordination among multiple departments (e.g., Fiesta project). Alternatively, the Contract Services Unit could merely act as a facilitator to help ensure that responsibility for such contracts is assigned to an appropriate lead operating department. To illustrate, in Montgomery County (MD), the Procurement Office designates a contract administrator for every contract.

The Contract Services Unit, as a central management staff function, should be assigned to a department with similar entity-wide support functions. While there are other options worthy of consideration (e.g., Finance or Purchasing & General Services), we recommend placing it within the Asset Management Department (AMD), at least until the new citywide standards are implemented. AMD, with its real estate contract negotiation and monitoring experience, is well positioned to provide technical assistance with other business contracts. Considering its success in developing citywide policies and systems for lease agreements, we believe that AMD will be an effective change agent.

AMD's role with real estate contracts would not be changed by the proposed strategy and would continue to include the following responsibilities:

- Real estate acquisition – Continue to serve as lead negotiator and coordinator where a site has not been pre-selected (per City Manager's 2/17/00 memo) or a department determines a need for added expertise (e.g., Fire and Police stations, Library sites, Records Storage Facility and One-Stop Development Center)
- Lease execution and renewal - serve as lead negotiator and coordinator except where departments possess the requisite facility leasing and management expertise (e.g., Aviation)
- Real estate contract review - Continue to review and approve draft contracts (subject to CAO approval) prior to City Council consideration

- Real estate contract monitoring – Develop and administer a database to track and monitor real estate contracts, generate monitoring reports to the departments and Management Team and serve as a consultant to the departments

AMD should continue to assume lead responsibility for space planning and management in City-owned and -leased facilities. Illustrative projects include coordinating the One Stop Development Center and meeting departmental space needs (e.g., City Attorney's Office, Housing group and Internal Review).

The Purchasing & General Services Department should be assigned an important role in implementing the recommended strategies for improving the management of business contracts. For example, this department is responsible for vendor data base management, including gathering pertinent demographic and business data on all City vendors. The Purchasing & General Services Department could assist the Contract Services Unit by proactively identifying those vendors that have the appropriate contract experience, size, and potential financial wherewithal to compete for specified solicitations.

The Contract Services Unit should develop a plan for clarifying Asset Management, Public Works and Finance roles for franchise contract and right-of-way management issues. For example, under such a plan, the Finance Department could be assigned lead responsibility for coordinating franchise-related business contracts. Where street right-of-way issues are involved, the Finance Department could delegate street and related public infrastructure activities to the Public Works Department. This plan, once developed, should be approved by the City Manager.

2. Establish new contract specialist positions and develop a citywide contract management career track for contract specialists.

AMD should develop a mission statement and staffing plan for the new Contract Services Unit. Initially, we estimate that the new unit will require six positions—a manager and five staff. In addition, we recommend that an attorney from the CAO be loaned to the Contract Services Unit for the first twelve months to assist in formulating citywide contract management policies and standards.

The six Contract Services Unit positions should be structured as follows:

- Contract Services Unit Manager/Special Projects Manager – supervise the Contract Services Unit, serve as negotiator for high profile contracts, mediate contract disputes and provide training to operating department staff (requires MBA, MPA or JD plus at least 5 years of contract management experience)
- Contract Services Coordinator/Special Projects Coordinator (3) – develop and update the contract management manual, participate in contract negotiations and provide training to department staff, perform cost-benefit analyses and fiscal projections, assist departments with developing contract solicitation documents, evaluating proposals, expediting contract approvals, monitoring key contract performance

indicators and reviewing contract performance issues (requires BA or BS plus 3 years of contract management experience)

- Contract Specialist – develop and manage Citywide business contract database and provide contract information to operating departments (requires BA or BS plus 1 year of database or contract management experience or associate degree plus 3 years of related experience).
- Senior Administrative Assistant – provide administrative support services for the Contract Services Unit

The Contract Services Unit, with the assistance of Human Resources, should develop a contract management career track. The City should adapt personnel classification and management procedures to facilitate staff movement across agencies. At a minimum, the City should establish a personnel classification to accommodate a contract management career track so that personnel can move about the City without having to relearn practices at each agency.³⁰ The position structure should distinguish positions based on experience, education and capabilities. A job study should be conducted to best determine the appropriate job classifications for these positions.

Contract management is an increasingly complex discipline that should be recognized as a discipline similar to other public sector disciplines (e.g., procurement and personnel management). Managing contracts requires an unusual blend of skills (e.g., contract law, planning, market analysis, asset valuation, cost analysis, proposal evaluation, negotiation, performance measurement, contract monitoring and dispute resolution). A professional contract management training and career track represents a natural evolutionary step for any public sector agency committed to effective outsourcing.

The Contract Services Unit should develop a comprehensive training program for contract management staff throughout the City. This training program should include course curricula, materials and schedules as well as personal training plans. Some of the initial training courses should include contract negotiation and monitoring techniques.

3. Establish an interdepartmental business contract improvement team to promote business contract process improvement and training initiatives.

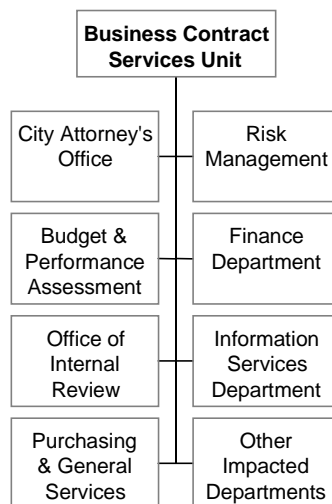
During our best practice research, we found no useful staffing models for managing business contracts. This made it very difficult to determine the appropriate staffing levels for the recommended contract services unit. Therefore, we are recommending that, in addition to creating a small central support unit, the City designate existing staff from other central staff departments to provide additional contract planning, administration and monitoring expertise for operating departments on an as-needed basis. This will enable the City to minimize staffing increases until realistic estimates of increased work volume coupled with cost-benefit analysis can be performed.

³⁰ A survey of state and local government purchasing agencies found that the actual functions of purchasing contract managers differ very little across agencies, only policies and practices do. Eugene W. Muller, "Job Analysis Comparing the Tasks in State/Local Government Purchasing and Institutional Purchasing," Center for Advanced Purchasing Studies, 1994.

The Contract Services Unit should work with other departments to establish a continual improvement process team for business contracts. This team—the Business Contract Improvement Team—should have broad representation from several departments, including the CAO, Purchasing & General Services, Budget & Performance Assessment, Finance, Risk Management, Internal Review, Aviation, Parks and Recreation and Community Initiatives. The team will provide a “dotted line” liaison relationship between the new Contract Services Unit and the operating departments.

The Business Contract Improvement Team should be established at the outset of the implementation process. The team should serve as a steering committee and as a resource both in the development of the processes and on an on-going basis in addressing contract needs. The Contract Services Unit, which should chair the team, will be responsible for the implementation of the recommended strategies. An organizational chart outlining this structure is set forth below.

Possible Structure for Business Contract Improvement Team



The Business Contract Improvement Team should have the following additional functions:

- Focus on formulating and reviewing Citywide business contract management policies and standards;
- Continually seek to improve business contract processes, including contract solicitation, selection, monitoring and termination;
- Strive to strengthen departmental contract management capabilities by periodically assessing departmental staff resources, and promoting training initiatives; and
- Provide an internal pool of consultants and trainers, perhaps in conjunction with the City’s “Train the Trainer” program.

Many large private sector organizations maintain committees to establish company standards for important business contracts for goods and services. The committees set

standards to reduce time-consuming inspections and duplicate reviews of common goods and services and reduce the administrative costs associated with tracking several different products and services providers. Designating internal consultants will provide additional contract management expertise for departments on an as-needed basis, thereby reducing the need for additional central support staff.

For example, internal consultants from Purchasing & General Services could help draft Citywide contract management standards and prepare business contract solicitation packages. Budget staff could help assess staffing resource issues related to the administration of business contracts. Finance staff could lead efforts to improve cash management practices pertaining to business contracts. Internal Review staff could provide technical assistance on improving monitoring techniques for business contracts.

Internal consultants from Risk Management could be used to ensure departments limit the City's loss exposure in areas such as insurance requirements and safety provisions for certain types of contracts. Other uses of Risk Management internal consultants could include ensuring that appropriate indemnity provisions and requirements for performance bonds are in City contracts, where appropriate. Internal consultants could also verify that insurance and surety companies named in completed vendor contracts are financially sound, so that the City would be covered if some financial loss actually occurred.

4. Develop a citywide staffing plan for managing citywide business contracts.

The Contract Services Unit, with Human Resources' assistance, should develop an inventory of departmental staffing resources dedicated to managing business contracts. It should conduct periodic assessments of departmental staff resources to determine the sufficiency of those resources for managing business contracts in accordance with established contract management standards. It should use this inventory to identify not only staffing shortages, but also any gaps in contract management expertise.

Working with the Business Contract Improvement Team, the Contract Services Unit should develop a staffing plan for ensuring that the operating departments possess sufficient capabilities to manage their respective business contracts. It should also establish a technical assistance program to assist departmental contract staff with complex business contracts.

The City also should establish a comprehensive training plan for contract managers and improve training for contracting personnel, perhaps in conjunction with purchasing staff. For example, the City should consider establishing a mentor program with leading private companies in the city and surrounding area. The objective would be to link contracting personnel with their private company counterparts to promote innovative contracting practices (e.g., contract management and vendor quality).

Strategy No. 2 - Establish citywide business contract management standards.

As outlined in the strategy templates set forth in Appendix E, this strategy includes four tactics as follows:

- Stratify business contracts by type and risk factor
- Develop citywide business contract management policies and standards
- Develop standard concession policies and standards
- Develop contract documentation and records management standards

Strategy 2 and the recommended tactics will provide for more consistent business contract management practices, including contract terms and provisions and contract filing and documentation procedures. This, in turn, will significantly simplify the administration and monitoring of these contracts and ultimately improve business contract performance.

A citywide concessionaire management program would ensure preservation of the City's safety, health, financial, and quality-service interests. The concessionaire management program would also provide several advantages, including clearer concessionaire accountability, better understanding of City requirements, improved contract performance, and enhanced public confidence and image.

Our recommended tactics for this strategy are discussed in more detail below.

1. Stratify business contracts by type and risk factor.

In order to achieve some level of standardization for business contracts, the Contract Services Unit should first classify business contracts by major contract type. The major types of business contracts include the following:

- Concession agreements
- Leases of City property in exchange for money or services
- Franchise agreements
- Other revenue-generating contracts
- Grant-related agreements with private parties
- Inter-local agreements
- Other public-private partnership agreements (e.g., development and tax increment financing contracts)

Once the Contract Services Unit develops a logical scheme for classifying business contracts by type, it should stratify business contracts by risk factor (e.g., cost, degree of public contact, degree of financial or legal risk). For example, high-risk contracts could be defined to include revenue contracts over \$1,000,000 in annual revenues or liability (e.g., the Alamodome concession and convention center catering contracts).

The employees who manage business contracts offer some guidance as to which contracts carry the greatest risk. The departments responding to our survey reported that the highest risk contracts they administer include asset-based lease, public event, large concession, large aviation (e.g., airline and car rental contracts), multiple revenue source contracts (e.g., base rent plus a percentage of rent), federal and state grant, and public asset improvement contracts. City employees also expressed concerns about public-private partnership contracts funded through community-based organizations that lack the capacity to meet the terms of the contract and ensure adequate service levels.

Developing a method for classifying or stratifying business contracts based on objective factors is a prerequisite to calibrating processes to different contract needs. For instance, once a logical contract classification structure is in place, the City will be able to develop a simplified process for small or low-risk contracts.

2. Develop citywide business contract management policies and standards.

The Contract Services Unit, working in conjunction with the Business Contract Improvement Team, should develop standard business contract management policies and procedures. It should document these citywide policies and procedures as part of the City's administrative manual.

Our research revealed a growing acceptance by state and local governments of standard forms and procedures for at least some contracts (see table below).

Summary of Contract Management Innovations

Organization	Contract Management Innovation or Initiative
City of Chicago	√ Standard construction contract terms & conditions √ Streamlined vendor submittal forms & procedures
Hillsborough County (FL)	√ Standard application form for professional consultants
Montgomery County (MD)	√ Standard solicitation guidelines & contract & RFP documents
Commonwealth of Massachusetts	√ Standard contract monitoring form with checklist of review issues, including issues pertaining to specific contract types (e.g., social service, real property, construction & grant contracts)

It is a best practice to develop and maintain a business contract manual that will summarize basic guidelines. Standardization minimizes ad-hoc and uncoordinated contract decisions, reduces training and operating costs, and improves oversight.

Actually, the Contract Services Unit should consider develop two contract manuals for contract management practitioners, one for attorneys and one for contract managers. The attorney manual should include a contract development checklist for attorneys; the CAO's draft guide should be used as a departure point. The contract management manual should use hypothetical contracts to illustrate decision-making principles, data gathering and recording needs, and other operating guidelines.

The contract management manual should set forth with considerable precision the management procedures for each stage of the contract process, including planning, solicitation, evaluation, selection, negotiation, award, monitoring and termination. It should clarify the most critical management activities, milestones and dates for each type of business contract, including a monitoring checklist or tickler system. Each party's role (e.g., attorney and department head) should be clearly delineated as well.

The contract management manual should include a model contract modification and termination process. It also should include a contract renewal policy to ensure that operating departments extend contracts only when it is in the City's best interests to do so, not merely to avoid the hassle of initiating a formal competitive process.

The business contract development manual should include standard contract formats and templates for each contract type (e.g., lease contract). It should include model contract provisions governing such issues as the following:

- Insurance, accepted insurers, subrogation, and related issues (except for unique circumstances, general liability, professional liability, automobile liability, workers' compensation and related provisions should be uniform)
- Indemnification (if the City allows the contracting party to indemnify the City against its own negligence, there should be a choice of two provisions: one where the contracting party indemnifies solely against its own negligence and another where the contracting party indemnifies against its negligence and the City's)
- Inspection of books and records (there will be circumstances where the contracting party is required to obtain a CPA audit, but otherwise, access to books and records, and their retention, should be uniform)

So-called boilerplate provisions (e.g., assignment, severability, governing law, notices and ethics) should be uniform and used consistently, to the extent possible. Where possible, the City should employ a consistent numbering scheme for contract provisions (e.g. use the same number for the escalation clause on all contracts). The dispute resolution mechanism could become increasingly important, especially for performance contracts.

The Contract Services Unit and CAO should adopt model guidelines for defining revenue for concession agreements and other performance-based business contracts. It should clarify the gross revenue definition and broaden the gross revenue definition for concession contracts to encompass alternative revenue scenarios (e.g., include complimentary event tickets). It should develop standard contract language for accommodating and recouping at least a portion of unforeseen business contract revenues.

3. Develop standard concession policies and standards.

The Contract Services Unit, in conjunction with the Finance Department and operating departments with significant concession operations (e.g., Aviation, Alamodome and

Parks and Recreation), should develop a concession operations manual with standard policies and procedures. A comprehensive concession management program, including policies and standards, would clarify City requirements, strengthen revenue controls and monitoring capabilities, and improve contractor accountability.

These standard policies and procedures should address the following subjects:

- Concessionaire organizational characteristics (e.g., size and type);
- Concessionaire operating characteristics (e.g., goods and services to be offered, hours of operation, facility type and location, construction and store design, build-out periods, marketing and advertising and logistical support);
- Quality and pricing issues (e.g., rates charged to customers);
- Concessionaire performance standards and evaluation.
- Financial administration (e.g., insurance coverage, delivery of rents and reports).
- Conflict resolution (City and customer).
- Public policy issues (e.g., MWBE, food sanitation and public safety issues).
- Standard language for concessionaire contracts.
- Other contract administration issues (e.g., negotiation of concessionaire agreements, changes in contracted operating terms, contract amendment and renewal).

The concession guidelines should promote the use of credit and debit cards by business contract vendors. The CAO could draft standard contract language that encourages all concessionaires to accept at least one national credit card and one debit card. The City should consider making acceptance of credit cards an additional prerequisite for obtaining certain types of revenue contracts (e.g., airport concessions). At the very least, the City should provide incentives to businesses that have credit and/or debit card capability. For example, in the bid or RFP process, the City should award extra points in the evaluation process to vendors that possess this capability.

The City's efforts in the past to broaden the use of credit and debit cards by its vendors have been hindered by staff time constraints. We recommend that the Contract Services Unit, with the assistance of the Finance Department, initiate a concerted effort to expand the use of credit cards by its concessionaires. As necessary, the City should use temporary assistance to maximize the number of vendors accepting credit and debit cards. The implementation costs should be offset by the benefits of accelerating cash flows and increasing interest income.

4. Develop contract documentation and records management standards.

The Contract Services Unit should develop standards for ensuring that operating departments maintain complete, up-to-date and reliable contract files and documentation. Such documentation is needed to help operating departments interpret contract language and actions in the event of contract disputes. At a minimum, the Contract Services Unit should design and implement a contract documentation management system (i.e., a process for documenting and distributing policies and procedures).

One of the most important contract management tools is the contract file. For every contract, there should be a file. The file should provide the prior history data vital to effective contract management.³¹ Without it, the City cannot effectively track cost or quality trends, assess prior contractor performance or determine with any precision whether if a contract was properly managed and terminated.

All contracts require complete contract files, but complex contracts often require more extensive contract files, including all documents relevant to contract decisions. In addition to the information listed above, complex contract files should include cost estimates and memos, performance or inspection reports and any correspondence documenting or justifying changes and other decisions—that is, any event or transaction that is likely to be useful in resolving future contract disputes.³²

Best contract file maintenance practices include:

- Include a contract abstract with key data (e.g., contract criteria, important dates, assigned responsibility areas)
- Ensure that all files include separate sections for compliance issues, insurance, performance reports, audit reports, and pending issues or data
- File all correspondence in chronological order
- Ensure that all files are accessible to the contract administrators

The City should develop a standard contract file checklist form to help staff ensure that each contract file includes all appropriate documents, e.g.:

Sample Standard Business Contract File Checklist

Contract Items By Process	Y/N	Staff
Overall Contract Administration:		
Contract abstract (e.g., key dates & contract provisions)		
Contract responsibility assignment & contact data		
Contract event log		
Contract Planning & Solicitation:		
Planning documents (e.g., business plan)		
Budget authorization		
Procurement solicitation document (e.g., RFQ or RFP)		
Contractor proposals		
Contract evaluation & selection documentation		
Discretionary contractor disclosures		
Contract award (notification letter)		

³¹ For a discussion of the importance of past performance information and how to collect and use it, see Ronald L. Straight, "Measuring Contractor's Performance," *Journal of Supply Chain Management*, vol.35, No.2, 1999, pp.18-28.

³² Good examples of problems with contract files and how to solve them can be found in Office of the Inspector General, Department of Defense, *Contracts for Professional, Administrative, and Management Support Services*, report No. D-2000-100, March 10, 2000.

Sample Standard Business Contract File Checklist (cont.)

Contract Items By Process	Y/N	Staff
Contract Approval & Negotiation:		
Request for ordinance resolution		
Executed ordinance		
Executed contract		
Executed contract amendments		
CAO memoranda & signature forms		
Contract Monitoring:		
Fiscal performance reports & data		
Non-fiscal performance reports & data		
Insurance & bonding records		
Disadvantaged business participation records		
Federal & state requirements (if applicable)		
Budget revisions & approvals		
Audit reports		
Contract Billing:		
Invoices & billing statements		
Payment records		
Miscellaneous/Other:		
Other contractor correspondence		
Other City correspondence		
Other correspondence		
Pending data requirements		

Operating departments, which should be responsible for maintaining the master contract files, will need adequate filing space and resources to properly manage contract files. The Contract Services Unit should survey the operating departments to define these needs and develop budget estimates.

Strategy No. 3 - Implement a structured planning and solicitation process for business contracts.

As outlined in the strategy templates set forth in Appendix E, this strategy includes five tactics as follows:

- Establish a model contract planning process
- Consolidate similar contracts where practical
- Expand the vendor development program
- Develop a model contract solicitation process
- Strengthen contract renewal controls

Strategy 3 and the recommended tactics will offer major benefits to departments, contractors and recipients of City services. Standardizing and clarifying the contract solicitation process will result in basic, documented solicitation guidelines for all City departments to follow. These standardized guidelines should be used to assist City departments with planning and achieving a more competitive solicitation process. Use of standardized guidelines will help many departments anticipate unforeseen events and

circumstances that may occur during the business contract management process. Our recommended tactics for this strategy are discussed in more detail below.

1. Establish a model contract planning process.

The Contract Services Unit should develop contract planning guidelines and assist departments with using them. These guidelines should include techniques for coordinating—and consolidating—similar business contracts. It also should include methodologies for analyzing business contract opportunities before the solicitation cycle. This pre-solicitation analysis should affirm the value of the contract to the department's core mission, and assess the economic, commercial and political risks of the contract. Other suggestions for the model contract planning process include:

- Regularly track relevant industry trends to identify business contracting and partnering opportunities, and develop plans for future business contracts;
- Prepare business plans, including long-range revenue and cost forecasts, and alternative scenario analysis, for selected contracts (e.g., leases and concessions);
- Provide prior notification of planned business contracts for budget year³³, including an early assessment of outside counsel needs, costs and benefits
- Develop or refine performance measures for all business contracts (e.g., number of housing units for CDBG contracts);
- Ensure the CAO's early involvement with contract planning (before solicitation); and
- Develop a structured approach for planning big contracts (e.g., project manager assignment, schedules, workload projections, contractor expectations, expertise needs, outside counsel process and contract activities checklists).

The contract planning process should also include a proforma analysis (e.g., projected revenues, operating expenses and capital investments) on all major revenue-generating contracts for five years or for the length of contract, whichever is greater. The Contract Services Unit or Finance Department could assist the operating departments in developing such financial projections. In selected instances (e.g., complex and high profile projects or those with projected annual revenues over \$1,000,000), the City Manager may request the Contract Services Unit or Finance Department to review department-generated proformas.

2. Consolidate similar contracts where practical.

The Contract Services Unit should work diligently with the CAO and appropriate operating departments to identify opportunities for consolidating business contracts with similar objectives and requirements, beginning with revenue-generating contracts (e.g., leases, licenses and concession contracts). This tactic has several elements, including the following:

³³ The State of New York requires the prior submittal and approval of planned proposed consultant and service contracts over \$100,000, including renewal contracts, for the budget year.

- Consolidate contracts – strive to use fewer contractors and provide each with a greater share of the City’s contract volume (e.g., consolidate concession agreements that involve multiple departments);
- Establish strategic alliances with high-performance vendors – establish long-term alliances with contractors who will improve service, provide favorable pricing and reduce operational costs;
- Employ flexible pricing arrangements – institute flexible pricing mechanisms, such as *level of effort* (fixed amounts for specified performance levels), *incentive* (payment incentives for revenue enhancements) or *fee re-determination* (formula for adjusting fees after specified period of time);
- Increase use of public sector partnerships – explore opportunities for using regional consortia with other public agencies to improve the City’s buying power for appropriate business contracts; and
- Increase use of the State of Texas’ “blanket order” contract provisions for business contracts.

Consolidating business contracts is not altogether new to the City. The Standard Cellular Tower Lease Agreement represents a possible model arrangement for consolidating similar contracts. This agreement established rigid parameters for telecommunication providers to cellular towers on City property. Although these agreements were not consolidated, the City did employ a standard agreement which decreases the amount of time and effort involved in the contract negotiation process.

Strategic vendor alliances require a fundamental shift in the public sector procurement culture. The City of San Diego, for example, has developed a “Municipal Marketing Partnership Program” through which it forms business ventures with private interests that wish to use the city’s name and/or logo. The City receives substantial revenue from these affiliations, but they require a full-time employee to manage them, and such agreements have certain inherent risks.

Public sector partnerships have been used far more for service and commodity contracts than for business contracts. Nevertheless, it represents an innovative approach that the City should consider for appropriate types of business contracts (e.g., concession or catering agreements). For example, Montgomery County (MD) established a cooperative procurement program including joint subscription service and RFP provisions urging contractors to extend proposed services to multiple public sector entities (i.e., 31 members of Metro Washington Council of Governments).

The State of Texas has made provisions for local governments, school districts and other public bodies, to purchase from deeply discounted state-negotiated contracts – and the City of San Antonio does use some of these contracts today. State lists such as the Certified Master Bidders List (CMBL) allow the City of San Antonio to take advantage of the greater buying power of the state in order to procure better prices for commodities and products. The extent to which such provisions may be used for business contracts merits additional analysis.

The Contract Services Unit should conduct a market analysis to determine the most promising services for potential strategic alliances. In addition, the Internal Review Office should conduct an independent assessment of any strategic vendor alliances within three years of their formation to alleviate concerns that the alliances might hinder rather than foster competition. The City should not consolidate the vendor base at the expense of small or disadvantaged businesses. This impact could be mitigated by strengthening requirements for their participation as subcontractors in larger proposals.

3. Expand the vendor development program.

The Contract Services Unit, with the assistance of the Purchasing & General Services Department, should develop a vendor recruitment program for selected business contracts. The objective of this program would be to identify and recruit prospective vendors with demonstrated capabilities in managing revenue-generating contracts well in advance of the solicitation process. This program could include several elements, including the following:

- Vendor recruitment efforts, such as partnerships with local chambers, professional organizations and trade groups to identify companies, targeted recruitment of potential HUB's, and vendor fairs;
- Targeted advertising of appropriate contract opportunities;
- Vendor training initiatives (e.g., seminars, brochures and web-sites) to expand vendor service capacity in critical areas;
- A new vendor certification program to continually identify prospective vendors for planned solicitations using objective evaluation factors (e.g., service quality, technical competence, innovation and financial stability)
- An existing vendor rating program to assess the suitability of vendors for future solicitations using objective criteria (e.g., service timeliness, reliability and customer satisfaction);
- A vendor recognition program to spotlight outstanding vendors; and
- A vendor disbarment program to preclude vendors with poor performance ratings from competing for future contracts until they have rectified their service problems.

While a vendor development program requires significant staff resources to implement and maintain, it can yield substantial benefits. For example, alerting prospective vendors to planned solicitations well in advance will increase the number of vendor responses, and enable them to more effectively tailor their capabilities to the City's needs. Such efforts also could improve the involvement of disadvantaged businesses. Ultimately, a vendor development program will produce a more diverse and capable pool of contractors for future City solicitations.

The Contract Services Unit, with the assistance of the Purchasing & General Services Department, could pilot the vendor development program with revenue-based lease contracts (e.g., concession agreements). If it proves successful, the City could eventually expand the program to other types of business contracts.

Recruiting vendors can be challenging. The Purchasing & General Services Department could assist the Contract Services Unit by identifying those vendors with appropriate contract management capabilities. User departments could also help identify promising vendors through their respective contacts and professional associations. Vendors also could be provided incentives to participate in the program (e.g., assigned extra points in the evaluation process).

4. Develop a model business contract solicitation process.

Our research revealed significant work by several state and local governments in improving their solicitation processes. While few, if any, of these initiatives are targeted at business contracts, they could be retrofitted to business contracts (see table below).

Summary of Contract Management Innovations

Organization	Contract Management Innovation or Initiative
City of Chicago	√ Streamlined vendor submittal forms & procedures
Hillsborough County (FL)	√ Formal pre-certification process for professional consultants, including standard application form, proof of state registration, criminal affidavit form
Montgomery County (MD)	√ Prior notification of planned procurements for budget year √ Vendor subscription service offering on-line & fax access to solicitation data, standard contract policies & RFP documents for \$100 biennial fee (County reduced mail & reproduction costs & generated \$60,000 in fees)
Commonwealth of Massachusetts	√ Best value procurement legislation √ Performance contracting guidelines
State of Michigan	√ Streamlined RFP process √ Prime vendor contracts to meet all state needs in a commodity area (state reduced end-user ordering & inventory costs & quality problems) √ Specific evaluation factors for resolving tie bids (e.g., location, incumbency, prompt pay discount, value-added services & delivery date)
State of New York	√ Continuum of procurement techniques available to agencies (e.g., invitation to bid or request for proposals) √ Standard RFP development & proposal evaluation guidelines, including detailed procedures for assessing life cycle costs & contract values

The Contract Services Unit should develop a model contract solicitation process to assist City departments with achieving more competitive and efficient solicitations. A model business contract solicitation process should include the following elements:

- A full range of informal, formal and multi-step solicitation options for operating departments (e.g., request for information, qualifications, proposals and bids);
- Comprehensive solicitation guidelines (e.g., comprehensive checklists of submittal requirements for vendors);
- Pre-proposal conference guidelines (e.g., non-mandatory pre-bid conferences for projects of \$500,000 to \$999,999 and mandatory pre-bid conferences for projects with a projected budget of \$1 million or greater);
- Procedures for receiving, documenting and reviewing unsolicited proposals;

- Standard evaluation criteria, suggested weighting factors and scoring guidelines for assessing proposals and documenting contract award decisions;
- A mechanism (e.g., added presentations) or added criteria (e.g., location, incumbency or value-added services) to help resolve close decisions;
- Standard vendor communication procedures (e.g., sample letters for successful and unsuccessful proposers or a vendor subscription service offering on-line access to solicitation data, policies & forms for an annual fee);
- Suggested evaluation team composition to ensure objectivity (e.g., cross-section of user department, Finance, Risk Management and ISD);
- Standard contract award procedures (e.g., formal notice to proceed, including special instructions, and mandatory contract planning conference before project begins); and
- Mediation/conflict resolution procedures for resolving situations when the City and vendor are at an impasse.

To make the evaluation process fair and efficient, the Contract Services Unit should develop a checklist for preparing RFP/RFB's and other contract solicitations. A sample checklist is presented below:

Sample Checklist of Solicitation Process Features

Major Solicitation Process Features	Justification/Other Comments
Contract Service Requirements:	
<ul style="list-style-type: none"> • Describe project size & scope, services to be contracted & performance standards • Summarize key department characteristics (e.g., activities, organization charts, personnel, policies & procedures) • Describe any anticipated implementation problems (e.g., relevant laws, departmental constraints & process weaknesses) • Describe type & amount of assistance available from contracting department (e.g., clerical, technical & supply support) • Identify mediation & conflict resolution procedures 	To properly evaluate a service opportunity, proposers need information about the department, scope of work, potential factors impacting their ability to deliver and other relevant issues.
Proposal Evaluation:	
<ul style="list-style-type: none"> • Consider non-cost factors & stress most valuable qualifications • Assign relative weights to factors (e.g., qualifications & price) • Describe composition of evaluation team 	Vendors are more likely to respond if they believe that their capabilities will be seriously considered.
Proposal Submittal Process:	
<ul style="list-style-type: none"> • Provide name, address, and phone number of contact person • Hold pre-proposal conference & facilitate vendor communications • Provide other proposal process information (e.g., key dates) • Document procedures for acceptance of unsolicited proposals 	Pre-proposal conferences can help gauge level of interest & need for additional efforts to attract suitable bidders.
Proposal Format & Content:	
<ul style="list-style-type: none"> • Require full disclosure of proposer information (e.g., size of firm, offices, local presence & potential conflicts) • Require full disclosure of pricing terms (e.g., form & timing) • Require full description of capabilities (e.g., personnel qualifications, financial condition & special products) • State City's right to approve or reject personnel changes 	Structured proposal formats can be more efficiently evaluated and makes the process fair to all.

In addition, the Contract Services Unit should develop standard solicitation documents (e.g., a model RFP with standard nomenclature and content requirements). Based in part

on the Texas General Services Commission's suggested approach, we recommend that the City's standard business contract RFP include the following sections:

- Introduction (i.e., overview of solicitation document and general information about the City and its objectives for the contract)
- Statement of Contract Services (e.g., project scope and technical specifications)
- Submittal Requirements (e.g., vendor qualifications and proposal content)
- Contract Selection Process (e.g., project schedule and evaluation criteria)
- Contractual Requirements (e.g., standard terms and conditions)
- Appendices (e.g., administrative information, contract award, execution of offer and historically-underutilized business forms)

The City may delete, add or reorganize the above components to clarify requirements. It may also incorporate exhibits or attachments as applicable.

A model solicitation process will help ensure that potential bidders fully understand the scope of work, evaluation criteria and all other critical elements associated with the project. Ultimately, more effectively structured solicitation mechanisms will maximize competition and result in better contractor performance.

5. Strengthen contract renewal controls.

The Contract Services Unit should develop contract renewal guidelines. The purpose of such guidelines would be to ensure that business contracts are not renewed merely for departmental convenience, but because it is in the City's interest to do so. First, we recommend that departments ensure an adequate segregation of duties for contract renewals (and contract modifications as well).

Second, we recommend a mechanism that will enable departments to review certain multi-year business contracts before renewing them. The City's operating departments contract renewal process could be improved by incorporating consistent risk assessment criteria and performing risk analyses prior to extending multi-year contracts. Sample risk assessment criteria would include:

- Are insurance, lease documents, and financial statements in the contract file and up-to-date?
- Does the contract include specific performance measures for service that have been met or exceeded by the vendor?
- Have recent financial projections been performed for similar contract services ensuring that fees received from the vendor are in line with financial projections?
- Are there any significant business changes on the horizon that might materially alter the vendor's potential for performance prior to the end of the next extension period?

The employment of risk analysis techniques for multi-year contracts will reduce the prospects of renewing contracts that should not be renewed (i.e., those contracts with significant risks of financial loss for the City). In the short run, this mechanism will

probably result in more RFPs for multi-year contracts, but in the long run, it will increase the likelihood of satisfactory vendor performance.

Strategy 4 - Streamline the business contract negotiation and approval process.

As outlined in the strategy templates set forth in Appendix E, this strategy includes five tactics as follows:

- Delegate more contract management authority to departments
- Streamline the Council approval process for business contracts
- Streamline the contract management process for small or routine contracts
- Develop a structured approach for complex agreements
- Improve business contract negotiation techniques

Strategy 4 and the recommended tactics will expedite contract negotiations and approvals, improve relations with local businesses and other contractors and increase opportunities for enhancing revenues. A streamlined contract negotiation and approval process will give City contract officers the tools they need to do their jobs more effectively and help them generate more revenues for the City. If successful, this tactic will enable the City to reduce the number of business contracts it manages and improve its monitoring of the contracts it maintains. Our recommended tactics for this strategy are discussed in more detail below.

1. Delegate more contract management authority to departments.

The City Council of San Antonio, pursuant to the City Charter, should delegate greater authority to directors and managers to approve business contracts. It should consider increasing the approval threshold to at least \$100,000.

Most governments delegate greater approval authority to managers than does the City of San Antonio. As illustrated by the table below, however, these contract approval thresholds vary dramatically.³⁴

Contract Approval Thresholds for Selected Governments

Entity	Threshold for Professional Services	Threshold for Commodities
<i>Bexar County</i>	\$25,000 ³⁵	\$25,000
<i>City of Austin</i>	\$32,000	\$32,000
<i>City of San Diego</i>	\$250,000	\$1,000,000
<i>City of Phoenix</i> ³⁶	\$25,000	\$25,000
<i>State of Texas</i> ³⁷	\$100,000	\$25,000

³⁴ Sources also include: Bexar County. Vernon's Annotated Code, Section 262.04, 262.023. County Purchasing Act; City of San Diego, General Services Commission of the State of Texas; and the Travis County Purchasing Department.

³⁵ For professional services, this threshold may be exempted.

³⁶ Purchases below this threshold do not require council approval, but still require staff approval on a graduated level, up to the Deputy Finance Director.

The City of San Diego has taken the boldest step. In 1998, the City increased its threshold from \$50,000 to \$1,000,000. According to a Procurement Specialist for San Diego, the \$50,000 threshold was so low that purchasing items were on the City Council agenda every week. The City Council concluded that it no longer wanted its agenda cluttered with small purchase items.

2. Streamline the Council approval process for business contracts.

The Contract Services Unit, as part of its efforts to develop model contract approval processes, should explore opportunities for reducing the number of times individual contracts must be approved by Council. For example, our process review revealed that many grant agreements (e.g., delegate agency contracts) require four Council approvals. Those approval steps are as follows:

- Budget for grant-funded services
- Grant proposal submittal
- Grant award acceptance
- Delegate agency contract authorization

For some of these grant agreements, it appears that two approval steps would probably suffice. While grant agreements tend to be very technical and unique in terms of their regulatory requirements, the Contract Services Unit should identify opportunities for minimizing unnecessary approval steps for business contracts.

3. Streamline contract management process for small or routine contracts.

The City should consider streamlining contract management processes for small or routine business contracts. A simplified small contract process could include the following elements:

- Easy-to-follow contract solicitation formats and procedures;
- Simplified boilerplate provisions (e.g., indemnification language); and
- Expedited negotiation and approval procedures; and
- Standardized tracking systems using existing technology (e.g. Access or other database software applications).

Such business contracts could be defined as those under \$10,000, or contracts with non-profit community organizations.

4. Develop a structured approach for complex agreements.

The City should develop suggested guidelines for planning and managing large, high-profile public-private partnership agreements. The methodology should address such

³⁷ The State of Texas permits “delegated purchasing authority” to individual agencies of contracts up to these amounts, but all contracts of \$15,000 or more still must be competitively bid.

issues as the project manager, project schedule, work load projections, expertise needs, outside counsel process and activities checklists. It should provide guidance on how to assemble a team for all aspects of the process, including selection and negotiation.

The City should develop a core team of City employees with demonstrated negotiation skills and experience. This team of negotiation specialists would include employees from numerous departments and diverse backgrounds, but they would share a common aptitude for complex contract negotiations. They would be provided special training to supplement their skills. They would be assigned to negotiations for large, complex and high-visibility projects.

The City should consider a pre-proposal entrepreneurial exchange mechanism for complex projects. This mechanism would provide a forum or safe harbor for developers or other entrepreneurs to discuss innovative ideas with a City staff team. It also would enable the City to share the City's core values or legal constraints related to a potential project (e.g., downtown plan, TIF or historical preservation regulations) before the private parties invest heavily in design documents or lobbying activities. If the City team determined that the plan met certain guidelines, the City could grant the proposer a limited time period (like an option) to negotiate an agreement with the City. Legal issues concerning this concept should be reviewed by the CAO.

5. Improve business contract negotiation techniques.

The Contract Services Unit should develop contract negotiation guidelines for helping departments improve the effectiveness of their contract negotiations. These guidelines should include the following elements:

- Criteria for allowing competitive negotiations for appropriate business contracts;
- Suggestions for assembling negotiating teams with appropriate staff (e.g. internal counsel, department staff and business specialists);
- Recommended core team for negotiating high-risk contracts;
- Guidelines for ensuring effective CAO communications and involvement during contract negotiations;
- Inventory of staff with specialized business knowledge and suggestions for involving these staff at appropriate stages of the negotiation cycle; and
- Techniques for documenting issues for potential contract modification (e.g., build a *wish list* to use when contractor requires budget increase).

The Contract Services Unit should involve representatives from such departments as Asset Management, Economic Development, Parks & Recreation, Aviation, Finance and Alamodome in implementing this tactic. These departments spend significant time in the contract selection, negotiation and execution phases, and their staff have a good working knowledge of the contract process. These departments also will derive the most benefit from an efficient contract approval process.

The CAO should be involved as it has the greatest understanding of required contractual terms and conditions. The CAO's presence would also help interpret or resolve perceived ambiguities in the contract. Finally, requiring CAO involvement in high risk or complex contracts should mitigate concerns of department heads taking on too much responsibility as well as reducing the potential for litigation.

Strategy No. 5 – Institute more rigorous business contract monitoring practices.

As outlined in the strategy templates set forth in Appendix E, this strategy includes five tactics as follows:

- Promote performance-based contracting techniques for business contracts
- Strengthen performance standards for business contracts
- Develop a model business contract monitoring plan
- Improve departmental monitoring techniques for business contracts
- Expand the use of business contract audits

Strategy 5 and the recommended tactics will increase the City's emphasis on performance measures in monitoring business contracts, and provide more effective systems for monitoring contract performance. Performance-based contracting shifts the focus from measuring results to defining expectations and holding contractors responsible for meeting those expectations. Our recommended tactics for this strategy are discussed in more detail below.

1. Promote performance-based contracting techniques for business contracts.

As part of its effort to develop citywide contract management standards, the City should adopt a strong policy promoting performance-based contracting for appropriate business contracts. Performance-based contracting is an outcome-based approach to contracting³⁸ that specifies the contractor's performance objective, and often links contract compensation and renewal to the achievement of that objective. While contractors enjoy greater autonomy regarding their manner of performance, they also assume greater accountability for delivering the specified results.

Performance-based contracting shifts a public agency's emphasis from process to product. Instead of prescribing inputs, the public agency focuses on monitoring performance results. In addition, performance-based contracting shifts the monitoring role from a short-term, regulatory focus to a longer, partnership focus. As such, the contractor is treated as a strategic partner and provided incentives to improve customer service, especially in connection with public-private partnerships or joint ventures.

³⁸ Behn and Kant cf. note 5; William D. Eggers *Performance Based Contracting: Designing State-of-the-Art Contract Administration and Monitoring Systems*, Reason Public Policy Institute How-to Guide No. 17, Los Angeles: Reason Public Policy Institute, 1997.

To help promote the use of performance-based contracting methods, the Contract Services Unit should develop a checklist as a guide for planning performance-based contracts (see sample checklist below).

Performance-Based Contract Management Checklist

Performance-Based Contract Management Feature	Yes	No
<ul style="list-style-type: none"> • Are the City's expectations clearly defined & communicated? • Are the contractor's performance standards (e.g., quality, quantity & timeliness) measurable, verifiable & based on accepted industry standards? • Are there financial incentives or disincentives to promote effective performance? • Have potential proposers had ample opportunity to comment on draft performance standards & financial incentives? • Are the performance standards & incentives clearly set forth in the contract? • Does the contract have a monitoring plan describing how contractor performance will be measured against performance standards? • Does the department have sufficient contracting authority to form a multi-year relationship with the contractor, if feasible? • Does the City evaluate proposals and award the contract based on factors that ensure the highest long-term (life cycle) value for the City? • Do the authorized contract parties have sufficient flexibility to manage or modify the contract as needed to maximize value for the City? • Are informal conflict resolution methods incorporated into the contract? 		

To the extent reasonable, the City should adapt well-crafted performance-based contract provisions from existing agreements (e.g., airline agreement provisions for capturing potential sublet revenue) for new contract standards.

The implementation of this strategy should be phased in over a period of 3 years, beginning with concession agreements and other revenue contracts. A phased approach could also include a pilot program for certain types of contracts. The airport concession management agreement could be used as a pilot for this approach. The Contract Services Unit should arrange for specialized training for attorneys and other City employees who will be involved with performance-based contracts.

Reportedly, more public sector entities are migrating from rigid price-based procurement techniques to more flexible performance-based procurement models. Performance contracting is "one of the latest trends in public management,"³⁹ and has proliferated "as the contracting regime has evolved."⁴⁰ As local governments have increased their reliance on outsourcing, performance-based contracting has emerged as a tool to help control contractors, ensure desired outcomes and prevent corruption.

For example, under welfare reform, several states used this approach to pay private firms a flat amount for every welfare recipient placed in a job for at least six months (regardless

³⁹ Behn and Kant, cf note 5, p. 471.

⁴⁰ Smith, Steven R. and Michael Lipsky, *Nonprofits for Hire: The Welfare State in the Age of Contracting*. Cambridge, MA: Harvard University Press, 1993, p. 91.

of the actual amount spent on training, counseling and job searches). Metropolitan Nashville and Davidson County Government (Metro) has used Performance Incentive Contracting (PIC), a form of performance-based contracting, for such services as lost water service revenue recovery, utility audits, concession services and tree removal. While Metro claims to have experienced significant benefits from PIC, it also found that PIC requires much greater up-front staff planning to be successful.

2. Strengthen performance standards for business contracts.

The Contract Services Unit should help departments develop effective performance measures for each type of business contract (e.g., concession) and ensure that objective, measurable performance and quality standards are used in developing statements of work. Sample performance measures are listed below:

- Financial measures (e.g., collection rates and revenue targets);
- Customer satisfaction rates (e.g., as measured by mystery shopper surveys);
- Other service quality indicators (e.g., facility maintenance practices);
- Compliance measures (e.g., disadvantaged business enterprise policies); and
- Other measures (e.g., financial reporting and record-keeping measures).

The City should incorporate statements of work in performance-based contracts that clearly communicate its expectations. These work standards should be clear about what, when, where, how much and how well the work is to be performed.

The City should adopt model revenue definition language for concession agreements and other performance-based business contracts. It should clarify the gross revenue definition and broaden it to encompass alternative revenue scenarios (e.g., include complimentary event tickets). It should develop standard contract language for identifying and recouping at least a portion of unforeseen business contract revenues that are derived directly or indirectly from the use of City assets.

In addition to helping departments develop performance measures for contractors, the Contract Services Unit should establish performance measures for evaluating the effectiveness of the City's contract management processes. For business contracts, these internal performance measures could include the following:

- Percent of contract value managed via consolidated or regional contracts;
- Percent of solicitations with pre-proposal conferences;
- Average number of bidders or proposers per solicitation;
- Average processing time for each contract management stage (e.g., solicitation, selection, award, negotiation, approval and modification);
- Number of processing hand-offs for approving new contracts;
- Percent of contracts using standard contract forms;
- Percent of contracts with approved monitoring plans;
- Percent of contracts with comprehensive tracking systems;
- Average number of contracts monitored per monitoring employee;

- Revenue deficiencies found by Internal Review as a percent of total revenues;
- Percent of contracts renewed without a risk assessment;
- Percent of terminated contracts with favorable performance ratings; and
- Percent of contracts with long-term contract terms.

Such measures will support employee development, and promote the delivery of excellent services to City customers.

Finally, the Contract Services Unit should work with the CAO to expand the range of sanctions and other remedies available to departments for enforcing business contracts. For example, it should develop a menu of escalating sanctions (with termination as a last resort) for departments to employ in the event of poor contractor performance. It should incorporate Alternative Dispute Resolution (ADR) techniques (e.g., facilitation, mediation and mini-trials) into contracts where appropriate.

With the assistance of Internal Review or the Finance Department, the Contract Services Unit should update concession agreements to promote the rigorous enforcement of payment terms for all concessionaires. This will require the ability to age accounts receivable and develop methods of following up on delinquent accounts. The City should also develop punitive measures for delinquency such as charging a late payment fee. Other potential sanctions include debarment for vendors who do not comply.

3. Develop a model business contract monitoring plan.

The City should adopt a policy requiring a monitoring plan for every business contract before awarding or signing the contract. The Contract Services Unit should develop a model contract monitoring plan to provide departments with a cohesive and systematic approach for monitoring business contracts. The model contract monitoring plan should include the following items:

- A policy requiring the clear designation of a contract administrator, and assignment of monitoring responsibility, for every contract;
- Clear guidelines for securing the CAO's assistance with appropriate monitoring activities (e.g., reviewing sunset provisions and termination triggers)
- Sample performance measures and standards, and incentives (or disincentives) for encouraging contractors to maximize performance;
- Monthly key item monitoring reports for helping departments track key performance indicators for their respective business contracts;
- A standard contract monitoring checklist, including sample monitoring issues for specific contract types (e.g., concession contracts);
- Rigorous work-in-progress inspection procedures for ensuring compliance with quality, timeliness and cost objectives, including timely inspections of completed services for warranty enforcement (if applicable);
- Procedures for conducting random contract reviews;
- Techniques for documenting contract problems, corrective measures and vendor communications (the "paper trail" that supports the termination decision);

- Guidelines for ensuring the timely reporting of contractor performance problems;
- Techniques for securing prompt corrective action by contractors; and
- Procedures for ensuring adequate access to contractor records (if necessary).

The primary responsibility for monitoring each contract should rest with the department. As such, the departments should tailor their monitoring plans to the needs and risks of different contract types. Some contracts may only need limited on-site supervision, while others may need customer surveys and other collected data.⁴¹ Departmental reviews may suffice for most contracts, but some contracts may need external audits. The Internal Review Office should assist the Contract Services Unit in training the departmental employees who are responsible for implementing their contract monitoring plans.

4. Improve departmental monitoring techniques for business contracts.

Consistent with the monitoring plans they adopt for their various business contracts, the departments responsible for managing business contracts should expand their current monitoring efforts. Their monitoring efforts should include, at a minimum, clearly-defined performance measures and easy-to-use tracking contract reports and systems. Such monitoring activities should be supplemented by the timely use of special monitoring techniques.

The Contract Services Unit should help the departments expand quality assurance efforts for business contracts. For example, it should establish a citywide mystery shopper program for concession agreements. As part of an ongoing quality control program, the City should use mystery shoppers to assess the quality of concessionaire services at retail, restaurant and entertainment venues. The Aviation Department's mystery shopper program is a good model that could be used by other departments with similar agreements. This program should also be adapted to other City departments and services.

The Contract Services Unit should promote the use of trend, ratio and other predictive analysis techniques by departments to validate business contract revenues. Such techniques could include the following:

- Develop models for comparing projected concession revenues against verifiable business factors (e.g., the number of barge customers);
- Compare current revenues to prior period revenues on a monthly, quarterly and seasonal basis to identify unusual fluctuations;
- Compare revenues of similar operations (e.g. airport gift shops) to assess the reasonableness of reported amounts;
- Track actual collections against cash flow projections to identify possible unreported revenues;
- Measure gross receipts against performance standards to determine if sales goals are being met;
- Age accounts receivable to monitor and collect outstanding amounts; and

⁴¹ For examples see Kittower, Diane, "Counting on Competition," *Governing*, May 1998, 63-74.

- Measure against industry standards to identify unfavorable trends early enough to develop appropriate remedies.

These techniques would help identify unusual fluctuations and trends in concessionaire operations (and other revenue contract programs) between internal audit reviews. Potential problems would be identified and addressed before they degenerated into contract disputes or resulted in major revenue losses.

Such techniques will not be effective without the frequent and rigorous departmental monitoring of business contracts. The Contract Services Unit should work with the Internal Review Office and Business Contract Improvement Team to ensure that the targeted departmental contract review plans provide for a sufficient level of departmental monitoring activity. This activity should include a blend of remote monitoring using performance measures, tracking systems and special analytical techniques and field monitoring using mystery shopper surveys and other techniques.

One of the Contract Services Unit's top priorities will be to assess the adequacy of departmental capabilities and resources for carrying out such monitoring activities. For example, some departments periodically conduct program audits for grant-related agreements to help ensure that contractors accept appropriate clients, provide service in the correct area, and provide a high-quality product. The Contract Services Unit, in conjunction with the Internal Review Office, should regularly determine whether departments are sufficiently staffed and trained to conduct the necessary program audits. Similarly, it should ensure that the appropriate departments possess effective procedures for conducting compliance reviews of franchise contracts.

The Internal Review Office should also support the Contract Service Unit's efforts to bolster departmental monitoring capabilities. To that end, it should regularly review the citywide contract management training program to assess the scope and effectiveness of contract training activities for departmental monitoring staff.

5. Expand the use of business contract audits.

The Internal Review Office does—and should—play a vital role in ensuring that the operating departments manage their respective business contracts in an effective and efficient manner, and in accord with new citywide management standards. The City Council has recently approved additional audit staff for expanding internal audits of contracts, and we support this initiative.

In the initial year of its expanded internal audit program, the Internal Review Office should increase the frequency of concession contract audits. Ultimately, the Internal Review Office should ensure that all concessionaires are reviewed at least once every three years. Of course, some concessionaires may need to be reviewed more frequently depending on the size of the contract, the strength of internal controls and other risk factors. The Internal Review Office will make this determination as part of its risk assessment, refining its risk assessment criteria based on experience.

The Contract Services Unit should ensure that the Internal Review Office receives the information it needs to make timely decisions about contract risks and audit requirements. For example, as part of its effort to standardize contract management procedures, it should provide for a mechanism to ensure that the Internal Review Office has full access to the business contracts it could review or audit. For example, it should ensure that the departments route all franchise and license contracts (electronically or otherwise) to the Internal Review Office on a timely basis.

The Internal Review Office should ensure that its auditors receive adequate training for auditing business contracts, especially for contracts with specialized expertise requirements. For example, the training program should include special courses in fraud detection, cash controls and other issues unique to revenue contracts. The training program also should include information on how to audit franchise agreements for compliance with federal and state law. Where appropriate, the Internal Review Office should identify business contracts that require assistance from external audit firms. In these cases, the Internal Review Office should assign one of its audit staff to the project so as to increase the depth of its audit capabilities.

While the scope of this project did not include a review of the Internal Review Office, we understand that the effectiveness of that office is, at least to some extent, a function of its independence and objectivity. In order for the Internal Review Office to ensure that all business contracts are subject to independent scrutiny, it must have sufficient latitude to schedule business contract audits without undue interference.

While we believe that the Internal Review Office possesses sufficient independence to carry out its mission, public perceptions should also be considered. To maximize public perceptions of independence, the City could publish its annual audit plan before it is approved by the City Manager and Council. Any changes requested by the Manager or Council would also be published. The City Manager also should ask the CAO to review the legality of a mechanism that would allow the City Council to direct its own audits of business contracts, perhaps subject to a super majority requirement.

Strategy No. 6 – Expand and enhance business contract management technology.

As outlined in the strategy templates set forth in Appendix E, this strategy includes four tactics as follows:

- Create a citywide business contract management system
- Expand document workflow and imaging technologies
- Improve cash management technology for revenue contracts
- Empower field staff with mobile technology and training

As with most technology, the costs are concentrated and visible, but the benefits are more qualitative and distributed among many stakeholders, in this case, the entire enterprise. Nevertheless, the benefits of this technology, while difficult to quantify, will be profound. Revenues will be enhanced, unnecessary costs will be avoided, contract interpretation

and management errors will be prevented, and service quality will be improved. An automated contract system usually pays for itself by reducing lost revenues, poor contractor performance and internal deficiencies.⁴²

Our recommended tactics for this strategy are discussed in more detail below.

1. Create a citywide business contract management system.

ISD and the Contract Services Unit should design and implement a citywide contract management system to help operating departments track contracts from planning through termination. The new contract management system should be developed and implemented in two phases: 1) a citywide contract database and 2) a comprehensive contract management system. These phases are discussed in more detail below.

The first phase will result in a citywide contract database. This phase should *begin* with the expansion of the Asset Management Department's lease database—the Project Tracking System—and the distribution of that database to other departments. Asset Management's lease database is maintained in Microsoft Access, and has the necessary features for tracking contract initiation, approval and performance, but it is only an interim solution. This interim tactic, however, would allow all departments to use a uniform, cost-effective contract database system, and buy time for the City to develop requirements for a more robust, commercial-grade contract database. ISD has indicated a desire to convert the existing database from Microsoft Access to a commercial-grade database, which is an acceptable approach.

Ultimately, the citywide contract database should be more comprehensive than the Asset Management Project Tracking System. It should include an inventory of business contracts, other key data (e.g., bonding and insurance requirements), sample contract provisions and other features. It should provide easy read only access to any contract (e.g., by key word or party name). It could include a compendium of sample forms and provisions to help contract staff develop draft business contract documents.

Creating the citywide database will require the services of a database administrator familiar with standards for open databases, structured query language and current file- and field-structure protocols. The citywide contract database should use the standard for open database connectivity, since doing so will enable applications to connect to a variety of external database servers and data sources. This will make extracting data from government and commercial sources even more seamless.

The second phase would be to implement a more comprehensive, robust contract management system. The recommended contract management system should include several features, including the following:

⁴² Jonas Prager, "Contracting Out Government Services: Lessons from the Private Sector," *Public Administration Review*, 54(2) 1994, p.182.

- A full repository of the contract-related information that is generated and stored by City departments during solicitation, negotiation, execution and monitoring (e.g., information about contract violations or other issues as they arise);
- An real-time display of contracts, amendments to contracts, and other pertinent contract documents in real-time mode;
- A real-time display of key contract performance milestones (e.g., performance measures, timetables and status of completion);
- A mechanism to ensure that all contractors satisfy key contract obligations (e.g., bonding and insurance requirements);
- A tickler file with timely notifications of pending contract decisions or actions (e.g., contracts expiring within 12 months);
- Pre-programmed contract guidelines and tools for helping departments enforce established contract guidelines (e.g., the ability to match vendor against employee data to prevent employee contract abuses or conflicts of interest);
- A quarterly contract performance reporting system; and
- Executive level information to keep top managers informed of key citywide contract trends without requiring them to review excessive detail.

Finally, while not everyone who uses the system would need to be able to place information into it, the system should be robust enough to be accessed and used by numerous City employees *simultaneously*.

One way to develop a comprehensive contract management system would be to integrate a performance management system for business contracts with a leading-edge enterprise resource management system (ERMS). The City is considering an enterprise resource management package for its financial systems. Almost all of the major vendors who provide this service also have balanced scorecard, performance measurement and/or workflow tools. A separate requirements analysis will be needed to identify the most appropriate software solutions.

The City should implement the comprehensive contract monitoring system in a phased manner. For example, the City could start by developing a performance management model (e.g., performance measures and balanced scorecard) for the Contract Services Unit, as the pilot for an enterprise-wide effort. The City could automate large contracts (e.g., over \$100,000) and then gradually enter data for all remaining contracts.

The timeliness of this recommendation is fortuitous. In April 2001, the City's ISD Department developed a Request for Proposals (RFP) for a Departmental Project Management System (DPMS). Our preliminary analysis of this RFP suggests that DPMS will be a comprehensive project management system that, with minor modifications, could encompass the monitoring of business contracts as well. The DPMS and contract management system are *not* the same, but the contract management system could easily be a component of the DPMS.

To facilitate the consolidation of the DPMS and contract management system initiatives, we offer two recommendations: 1) develop a schedule for automating contracts and 2)

develop a *contract wizard* software module. With regard to the first item, we suggest the following schedule for automating contracts:

- Concession, lease and franchise agreements;
- Capital project, development and tax increment financing agreements;
- Information technology contracts; and
- Delegate agency contracts.

The contract wizard software module will pose an iterative series of questions to the user, and then help the user develop or modify a contract, using pre-approved language stored on a database – the same database envisioned by the DPMS. The module would complement the DPMS system and be activated once a *project* becomes a *contract*, as the City uses those terms. For example, a contract wizard could be designed to ask:

Sample Contract Wizard Contract-Builder Routine

Contract Builder Query	Contract Builder Response
<i>What type of contract is wanted?</i>	Select concession, lease, capital project, information technology, delegate agency or other.
<i>What is the term of the Lease?</i> [This assumes that the user selects Lease.]	Select one year, two years, five years or other.
<i>What are the Lessee's name, address, telephone, e-mail address and contact person?</i>	Enter appropriate response for each query. Verify response against database.
<i>What is the description of the Lease? Where are the premises? What are the dimensions?</i>	Enter appropriate response for each query. Verify response against database.
<i>What performance measures are desired?</i>	Select Timely Payment, Cleanliness of Premises, Customer Complaint Volume or other.

The result would be a draft contract, consistent as to language, traceable and ready for review by the CAO or other parties. The system would generate a record of any changes, perhaps with comments as to why such changes were made.

The contract management module could be configured to accommodate a *change management* feature, that is, a record of the adjustments and amendments to terms of a contract, as well as a record of the key personnel changes during the contract term. Capturing such information is critical to effective, real-time contract monitoring. A timely notation in the database would minimize reliance on verbal agreements by individuals who may not recall passing conversations, or who may no longer work for the City.

ISD has made assurances that the funding for the new project management system has been appropriated. Therefore, for the purposes of this study, the *net additional* cost for the modifications proposed herein would be incremental. At the same time, the fact that the RFP has been just released also means that the system does not yet exist. If unforeseen circumstances delay or terminate the DPMS, our recommendation still would be the same – that the City needs a comprehensive contract management system.

2. Expand the document workflow and imaging technologies.

To fully support the development and implementation of the recommended contract management system, the City should take full advantage of document imaging and workflow technologies for business contracts. By expanding the document imaging and workflow technologies that are in test mode or limited production, the City will enable its employees to view “virtual” copies of contracts through the City’s Intranet or a data warehouse solution.

One of the most dramatic trends in recent years has been the use of technology to streamline procurement processes—for vendors and public sector entities alike. Many public sector entities use the Internet for vendor registration, bid solicitation and bid processing, and there is growing acceptance of electronic approvals and signatures. For instance, the City of Chicago is providing vendors on-line access to bid data and its MBE/WBE directory, improving employee access to external databases for validating vendor data and automating contract document routing and workflow tracking.

The City of San Antonio is moving forward with similar technology. It uses Hummingbird© software called PC-DOCS, as well as DOCS-OPEN™ software for imaging technology. The software has the capability to recognize characters on a form and to “guess” the context of words, offering suggested words among a list of choices. These two features, called Optical Character Recognition and Intelligent Character Recognition, represent state-of-the-art imaging technology.

Document imaging, while invaluable, is only a precursor to workflow solutions. Workflow solutions make use of digitally-imaged documents to help managers determine a contract’s status at a glance. A workflow application can also generate management reports to help management identify potential resource deficiencies or contract process bottlenecks. Together, workflow and document management technologies should dramatically improve the environment for monitoring contracts.

To illustrate how workflow and document management technologies could support business contract management processes:

- The system sends an email to alert the appropriate contract manager that a contract is due to expire within 6 months unless it is renewed within 5 months;
- If the contract specialist fails to notify the contract database of the department’s decision (i.e., to renew the contract or not) within 30 days, action delays more than a specified time period, the system sends a courtesy e-mail to a supervisor;
- The contract specialist notifies the system that the department has decided to renew the contract and the system notifies the appropriate attorney (based upon indexed records) of the department’s intentions to renew the contract;
- The system (via its links with the workflow database) routes virtual copies of key contract documents (e.g., internal memoranda suggesting possible changes to the existing contract) to the appropriate contract manager and attorney;

- The contract specialist views the image of the original contract, any contract amendments and other documents, and develops recommendations (if any) for possible contract modifications;
- The attorney views the displayed contract modification suggestions and prepares a legal memo outlining any objections or suggestions; and
- Using the contract management system, the contract specialist takes the menu-driven steps to execute the contract renewal (with any required approvals) and the system automatically records these actions into the same database.

All of these steps would be performed electronically at the desktop computer level, without resorting to searches for physical documents. We believe that this technology can reap significant benefits if it is applied and deployed in an optimum way.

3. Improve cash management technology for revenue contracts.

The City should design and implement a comprehensive cash management system that focuses on improving cash flow from revenue contracts. In its next RFP for depository services (scheduled for December 2001), the City should emphasize this objective and seek system design and implementation assistance from depository banks.

With the bank's assistance, the City could develop a model cash management system that incorporates PC-based balance and transaction reporting software to monitor cash activity on a daily basis and features to facilitate E-business arrangements for business contracts. The cash management system would enhance the City's cash flow, reporting and monitoring capabilities.

The Finance Department, using internal reporting protocols and the City's internal email or phone (voice mail) system, should establish linkages among those departments responsible for collecting and depositing cash and other business contract revenues. It should develop and implement thorough procedures for reporting revenues and cash collection information to ensure proper accounting and reconciliation of bank deposits

The City should employ point-of-sale (POS) systems in all concessionaire, airport, Alamodome and parks and recreation venues where feasible and appropriate. It should link point-of-sale devices with internal financial reporting systems to facilitate the reconciliation of reported sales and cash deposits. Temporary help should be used as needed to facilitate the use of these systems.

It is in the City's best interest that concessionaires have strong accounting controls that capture and report all revenues. Where practical, the City should require concessionaires to install POS systems at their own expense. Practicality must be assessed on a case by case basis. If the concessionaire is large and sophisticated enough, it should use POS systems regardless of the size of the contract.

Point-of-sale refers to the time and place in which a sales transaction is made. POS systems automatically update inventory records, enhance cash management, and provide

transaction reports all from information recorded at the point-of-sale. POS hardware includes cash registers, optical scanners, magnetic card readers, and special terminals. These systems provide a level of assurance and control

Concessionaires would be the owners of POS systems; therefore, they should pay for them. However, to protect its interests, the City should require that, where practical, concessionaires install them. City links with concessionaire systems should be accomplished with existing resources assuming they have the in-house expertise. Otherwise, there could be a fiscal impact, which is impossible to calculate without additional information.

4. Empower field staff with mobile technology.

The City should consider the feasibility of procuring hand-held devices and mobile telecommunications equipment for business contract field monitors. The City currently supports to some degree the use of Personal Digital Assistants (PDAs) such as Palm™ products. Some City departments already use laptop computers when contract monitors go into the field. The City could expand the use of these two tools.

This technology will make departmental staff more productive in conducting on-site contract compliance reviews. There is a growing trend for organizations with extensive field operations to use mobile communications to free staff from returning to headquarters for filing reports or receiving dispatch information. Most businesses with satellite or field offices that would interact with City contract compliance personnel can communicate remotely with their home bases.

Mobile technology will help in monitoring contracts especially in the parks and recreation, retail concession and social services areas. For example, when park rangers are on duty monitoring park activities, they could note whether the required permits are in place and any apparent violations have occurred. That information could be transmitted to the appropriate department via the mobile technology.

Some of this is done already. According to the City's Parks Operations Manager, there are about 115 park rangers (95 patrolmen) and 6 golf course managers (excluding the pro shop personnel) in the field. These persons already serve as informal contract monitors. The mobile technology could empower more of them to provide meaningful assistance while doing their other work.

As another example, patrol personnel could, in the course of their public safety functions at retail establishments, check for apparent violations and record them for tracking against performance measures in the contract agreements. The use of mobile technology means that these records would already be electronic, at a minimum, and could be transmitted to the City electronically.

As a third example, social services field workers from DCI use laptops when making field visits. DCI has approximately 7 or 8 such laptops citywide. This technology or other mobile technology could be used to monitor, track, record and even transmit back

to the City, progress reports, citations or other important information on the status of the social service providers' contracts.

Several cities in Texas, including San Antonio, have tested the use of mobile technology – including laptop computers or PDAs – in some of their field operations. The City of San Antonio is evaluating a technology called “CDPD” which enhances wireless communications. In fact, ISD has obtained funding for the current budget year to continue the City’s migration to CDPD.

However, the widespread use of PDAs for contract monitoring is not anticipated at this time. We recommend that the City conduct a feasibility study of mobile technology for contract monitoring applications in two to three years. At that time, ISD and the Contract Services Unit will be in a better position to determine whether the investment will produce sufficient benefits. The affordability and functionality of mobile contract monitoring applications will likely improve during that time as well. In the meantime, ISD will develop the network infrastructure that will facilitate the full-scale implementation of PDAs for contract monitoring.

IV. CAO Findings and Recommendations

A. Overview

Lest we lose sight of the overall picture concerning the CAO's performance, we make the following threshold observations:

- San Antonio spends far less on its overall legal function than other large cities we surveyed and the CAO is understaffed for lawyers and paralegals;
- Despite some management issues that are addressed herein, the CAO comprises many dedicated lawyers and employees who want to serve the City;
- While clients value the quality of the legal services provided by the CAO's most seasoned attorneys, they are not satisfied with some components of legal service, particularly the depth and breadth of legal talent, and the timeliness and consistency of advice and representation; and
- Although the CAO does oversee outside counsel services, much more could be done to effectively monitor and control the cost and quality of outside counsel.

The two major problems uncovered by this study—inconsistent attorney performance and client service—stem in part from below-market lawyer compensation levels and obstacles to aggressive performance management (e.g., protection of nearly all CAO's lawyers by the City's civil service system). The City Attorney's ability to aggressively manage performance is hampered by civil service protection, and inadequate resources for rewarding top performers with significant pay adjustments.

We live in a “pay for performance world.” In the private sector (e.g., in a law firm), inadequately performing lawyers are quickly dismissed. Considering the most important source of feedback for any law office – what its clients say – most of the CAO's client complaints stem from these things. That is, the major complaints relate to the consistency of the quality of legal advice and insufficient depth and breadth of experience of the lawyers. Clients themselves realize that CAO lawyer compensation is too low and that civil service rules hamper performance management.

To address these management issues, we recommend the following seven strategies:

- Enhance the stature of the legal function and design and implement a strong client service model;
- Establish a service-oriented organizational structure;
- Develop a service-oriented staffing model;
- Attract and retain outstanding lawyers and paralegals;
- Enhance performance, supervision and training;
- Improve the management and utilization of support resources; and
- Improve the management of outside legal services.

The findings, strategic vision statement and recommendations pertaining to the CAO are discussed in more detail below.

B. Strategic Vision for CAO

The Ad Hoc Oversight Committee envisions a CAO with a strong reputation for high standards and exemplary service that compares favorably to public law offices in other large cities. Its vision statement for the CAO is summarized in the table below.

Strategic Vision Statement for CAO

Strategic Area	Strategic Vision Elements & Characteristics
Service Needs & Quality	<ul style="list-style-type: none"> √ Competitiveness with outside counsel as to areas of core competency √ Timely and responsive service (e.g., personnel actions, civil service hearings and contract interpretations)
Staff Expertise & Training	<ul style="list-style-type: none"> √ Sufficient depth and breadth of expertise in core competencies (e.g., open meetings, public records and general municipal law) √ Access to sufficient expertise in specialized legal areas (e.g., intellectual property, e-commerce, telecommunications and environmental law) √ Adequate knowledge of department operations to help identify business issues √ Strong recruitment and retention plan, including adequate compensation and career paths, for legal personnel to minimize turnover rate √ Adequate training and education resources and time for attorneys, including cross-training to ensure diversification of experience among attorneys
Organization, Deployment & Productivity	<ul style="list-style-type: none"> √ Private practice model to ensure strong representation for each department √ Equitable distribution of lawyers and workloads among the divisions √ Strong accountability for professional and licensed employees (examine bonuses for top performers and civil service protection for others) √ Effective methodologies and templates for streamlining work flow
Internal Resource Sufficiency	<ul style="list-style-type: none"> √ Adequate number of lawyers given the projected workload √ Adequate support staff for maximizing attorney effectiveness given the projected workload and number of lawyers √ Suitable office space, including conference space, particularly for professionals √ Efficient records management storage facilities
Technology Utilization	<ul style="list-style-type: none"> √ Effective use of (and training on) automated case management system √ Continual identification and introduction of cost-effective new technologies to increase attorney effectiveness and efficiency
External Counsel	<ul style="list-style-type: none"> √ Ability to use outside counsel when merited √ Standard criteria for using outside counsel (e.g., risk and complexity of issues) √ Standard criteria for managing outside counsel (e.g., identification, selection, hiring, firing, monitoring and cost control)

The Ad Hoc Oversight Committee identified several potential barriers to attaining its strategic vision for CAO. External factors noted by the committee that could pose challenges to the CAO included an increasingly voluminous and diverse legal workload. It is anticipated that the sheer number of contracts and other transactions handled by the CAO will continue to grow.

At the same time, the legal issues faced by the CAO will not remain static. Federal regulations (e.g., ADA and NAFTA) will impact the City. The State Legislature, which is in session every two years, will likely continue to enact laws affecting cities and the CAO's workload (e.g., franchise and annexation laws). Local initiatives and other public

policy issues, such as City-County consolidation, should continue to arise. Legal issues could become more complicated in such areas as land use controls, environmental law, electric power deregulation and intellectual property law.

The internal factors cited by the Ad Hoc Oversight Committee included budgetary constraints and resultant limits on CAO staffing levels and compensation. In turn, such restrictions could impair the CAO's ability to compete with the private sector for new law school graduates, let alone experienced attorneys, and retain and train current CAO attorneys. Attorney turnover within the CAO could worsen, forcing the CAO to become overly dependent on outside counsel.

The strategic vision for the CAO must also reflect, at least to some degree, the relevant legal, fiscal and technology trends for in-house law departments, municipal and corporate. These external trends are presented below in accordance with the same strategic areas used for summarizing the CAO strategic vision.

Summary of Relevant External Trends for CAO

Strategic Area	External Factors Affecting In-House Law Departments
Service Needs & Quality	<ul style="list-style-type: none"> √ Increasingly intense competition with private law firms for the privilege of handling the legal work of the client organization √ Greater client focus (i.e., emphasis on client relationship management, or determining and meeting the needs of client organizations) √ Greater involvement of lawyers in adding value on client operational issues, with lawyers viewed less as legal technicians and more as business advisors √ More demand for creative ways to accomplish client objectives in a legally prudent manner (i.e., telling a client "no" is the start of the legal process)
Staff Expertise & Training	<ul style="list-style-type: none"> √ Stronger competition for good legal talent than ever before with an extremely tight job market and record demands for legal services √ Dramatic increases in starting lawyer salaries at law firms in recent years √ Greater training not only in substantive legal areas, but also in lawyering skills (e.g., negotiation, direct and cross examination and writing) and management (e.g., time, support staff and case management)
Organization, Deployment & Productivity	<ul style="list-style-type: none"> √ Shift from simple organizational structures based on legal functions (e.g., a litigation or real estate division) to matrix structures reflecting client needs √ Greater use of measurable performance standards and tools, including detailed, timekeeping, to assess current effectiveness and plan future improvements √ More dual ladder career paths for lawyers and paralegals. management and supervision or non-management, senior status lawyers and paralegals
Internal Resource Sufficiency	<ul style="list-style-type: none"> √ Increasingly effective utilization of paralegals in the delivery of legal services (at both the lawyer and paralegal levels) and fuller recognition as professionals √ More effective delegation of work to the lowest competent level √ Proportionately more paralegals, and fewer legal secretaries and clerical level personnel, to assist the lawyers and paralegals √ Active control systems, including exception reporting and face-to-face file reviews
Technology Utilization	<ul style="list-style-type: none"> √ Greater emphasis on technology planning and training strategies √ On-going assessments of technology needs and user satisfaction √ Closer attention to the number and type of IT staff and the overall amount and quality of technology support provided to end-users and systems

Summary of Relevant External Trends for CAO (cont.)

Strategic Area	External Factors Affecting In-House Law Departments
External Counsel	<ul style="list-style-type: none"> √ Shift in pricing strategies from traditional time and materials basis to fixed fees, competitive and portfolio bidding, and consolidation of work among outside firms √ Increasingly effective steps to control the quality and cost-effectiveness of external legal services, especially where time and materials billing is still used √ Pronounced trend toward retaining the more complex and strategically important work and referring the routine work (on a non-hourly basis)

The CAO's technology needs will continue to change. Hardware needs will include desktop computer, server and network infrastructure, communications, printer and reproduction resources. The enterprise system needs will encompass such areas as network, operating, case/matter management, document management (including litigation support and groupware), productivity, word processing, spreadsheet, presentation, data base and legal research applications. The CAO will have to stay abreast of new developments in these areas.

C. Key CAO Findings

1. Stature of Legal Function

Compared to what we typically find in major cities – and indeed, compared to in-house law departments of all types – the stature of San Antonio's legal function is not as high as it should be. Overall, it is our assessment that too often the CAO is not accorded the status that empowered, fully independent legal counselors merit.

One reflection of the CAO's stature in San Antonio is its overall level of resources. Compared to the other cities taking part in the surveys, the City of San Antonio spends substantially less on legal services. Altman Weil's 2000 Benchmarking Survey revealed the following comparisons between San Antonio and the peer cities:

- San Antonio spends only \$5.50 per city resident to operate the CAO, versus \$16.93 for the average of the other cities
- San Antonio spends less than one-half what the peer cities spend on legal services as a percent of total expenditures (0.57 percent versus 1.26 percent)
- San Antonio spends considerably less than the peer cities on legal services on a per attorney basis (\$155,409 per attorney versus \$240,087)
- San Antonio also spends considerably less than the peer cities on legal services on a per legal staff basis (\$90,655 per staff versus \$129,407)

Such comparative cost data must be used with caution. The cost differences may result from a wide variety of factors. Nevertheless, these data appear to indicate that San Antonio invests far less in legal services than do the cities that participated in our surveys. This is not only a reflection of the stature of the legal function, but a potential predictor of management deficiencies (e.g., staffing levels and service quality) as well.

2. CAO Client Service

With regard to the quality of client service, the client survey asked respondents to rate the CAO on 30 different aspects of service. In none of the 30 categories did San Antonio clients rate the CAO higher than the averages from the Altman Weil database (although we hasten to point out that many ratings were not far below the database averages).

In only two categories—relating well to clients and cost-consciousness—did San Antonio clients rate the CAO the same as the averages from the Altman Weil database. In all other categories (28), San Antonio clients rated the CAO below average compared to the law departments being rated in the Altman Weil database.

Specifically, the following client service categories from the survey show ratings that were 0.3 points below the average of the Altman Weil database (anything 0.3 or more points below average is a cause for concern in our experience):

- Responsiveness (e.g., returns calls on timely basis);⁴³
- Honesty about chances for success in a given transaction or litigation;
- Effective communications via written and oral presentations; and
- Accessibility on short notice.

In a related category—offering fast turnaround when necessary, the client survey rating was below Altman Weil database averages by 0.4 to 0.6 points.

Based on the results of the client survey, it is clear that the CAO's clients want their lawyers involved (at least to some degree) in the operational issues they face. Compared to the Altman Weil database, more San Antonio clients want their attorneys to provide both legal and operational advice and serve as integral members of their departmental decision-making teams. In short, most departments do not want the role of the CAO's lawyers to be limited to providing legal advice and ensuring legal compliance.

The client surveys also indicate that CAO lawyers do well in fulfilling the roles desired by clients. With regard to the question, "How well do the lawyers function as integral members of your decision-making team?" the CAO fared better than the Altman Weil database. Specifically, 6.1 percent of clients answered "exceptional," 53.9 percent indicated either "very good" or "good," 20.4 percent said "fair" and only 6.6 percent said "unsatisfactory."

3. Organizational Structure

In the view of the consultants – and the CAO's clients – the current organizational structure does not adequately meet client needs. The CAO was reorganized in 2000.

⁴³ In Question 1, Section III of the client survey, in response to the question whether their "telephone calls or e-mail or voice mail messages are returned promptly," 22.8% of CAO clients said either "sometimes" or "seldom," and another 1.3% said "never."

Some of its divisions were restructured along client service or departmental lines (e.g., the Community and Organization Division) while others were organized along legal substance lines (e.g., the Contract Division).

This resulted in the CAO's being partly organized along client service lines and partly along legal substance lines. This is confusing to some clients, and some lawyers also object to it. There is a better way – one which contains the advantages of both types of orientation – moving to a client-oriented structure with a so-called “matrix organization” overlay. More could be done to systematically identify legal subject-matter expertise residing in the organization's lawyers and paralegals. The First Assistant City Attorney's position is of critical importance to the operations of the CAO and that position has gone unfilled for several years.

Internal communications could be improved within the CAO. According to the attorney survey results, the lawyers split evenly into three camps when they described the degree to which the CAO is “team oriented.” Slightly more than one-third of the respondents agreed that the CAO operated as a “team,” about one quarter chose “group of individual lawyers” as the more accurate description and a third saw the CAO as a mixture of teaming and individualism. Within divisions, attorneys are perceived to act more as a team, but teaming becomes more problematic across divisions. Some attorneys suggest project-specific task forces to help improve communications.

4. Lawyer and Paralegal Staffing

The CAO has too few lawyers and paralegals to meet the current demand for legal services. Additionally, as in many law offices, not all lawyers in the CAO effectively utilize paralegals in the delivery of legal services. These findings are discussed in more detail below.

Based on the results of our interviews and client survey, it is clear that the CAO's clients believe that their needs for legal services are expected to increase, and that the CAO does not have enough lawyers to meet expected demands (a proposition with which we strongly agree). For example, when asked what “one improvement should be the CAO's highest priority,” clients said it was to hire additional lawyers. In response to a related question, 79.6 percent of responding clients said that more lawyers were needed in the CAO. Indeed, client service issues (e.g., responsiveness and timeliness) are directly affected by the CAO's staffing levels.

Our benchmarking analysis (see Appendix B) supports the contention that San Antonio has too few attorneys to meet the demand for legal services. For example, Altman Weil's 2000 Survey indicates that San Antonio has 28,262 city residents for every lawyer employed by the City, compared to an average of 14,185 for the other cities surveyed. Similarly, San Antonio has a much smaller CAO staff (all staff including attorneys, paralegals and support staff) than the peer cities. According to the Altman 2000 Survey, San Antonio has 16,486 city residents per total legal staff versus 7,371 for the peer cities.

San Antonio uses significantly fewer paralegals than is typically observed in most law offices. The CAO employs fewer paralegals in relation to the number of lawyers than the cities participating in Altman Weil's benchmarking surveys (see [Appendix B](#)). San Antonio employees 0.17 paralegals per lawyer, compared to a peer average of 0.28 in the 2000 survey and a peer average of 0.32 in the 1999 survey.

Altman Weil's surveys support the need for more and better paralegals. We found that 80.7 percent of the clients surveyed said that the CAO needed more paralegals. Our lawyer survey makes it clear there are not enough paralegals to whom to delegate work. Furthermore, the lawyers generally do not think highly of the skills of the paralegals. Over half the respondents rated the skill levels of the paralegals as "average." The refrain was that much paralegal time is occupied by secretarial tasks⁴⁴.

5. Lawyer Quality, Compensation and Promotion

Based on the results of our client survey, the San Antonio CAO did not fare as well as we would like to have seen in terms of the quality of services and depth of legal talent. Specifically, the client survey show ratings *regarding quality and depth* that were 0.3 points below the average of the Altman Weil database⁴⁵ for the following categories:

- Good in some important specialties;
- Effective at drafting and negotiating agreements;
- Results-oriented; and
- Diversity of talent.

In the following categories from the Client Survey, the ratings were below Altman Weil database averages by between 0.4 and 0.6 points (which we consider to be problematic):

- Provides consistently high quality work;
- Gives clear guidance to our Department; and
- Provides innovative solutions.

Only 17.6 percent of the CAO's clients responding to the survey indicated that they were "completely satisfied" with attorney quality, compared to 34.8 percent of clients in the Altman Weil database. Similarly, 20.2 percent of the CAO's clients were either "somewhat dissatisfied" or "mostly dissatisfied," compared to only 7.1 percent of clients in the Altman Weil database. Furthermore, 79.3 percent of the CAO's clients indicated that the quality of the work done by the CAO is "variable depending on the lawyer assigned," compared to only 58 percent of clients in the Altman Weil database.

Lawyer compensation at San Antonio's CAO is significantly below market (see [Appendix H](#) for comparative compensation data). Salaries for lawyers and paralegals (especially lawyers) are not market-competitive vis-à-vis lawyers working at other

⁴⁴ We note that half the lawyers graded their secretaries' skill level as "average" (IV, Q 8).

⁴⁵ As noted earlier, any rating 0.3 or more points below average is a cause for concern, in the estimation of the consultants.

government agencies in the San Antonio area or lawyers employed by City Attorney's Offices in other major cities in Texas.

In addition, the civil service system results in insufficient flexibility for the City Attorney in being able to meaningfully reward the office's best and hardest-working lawyers, and it hampers his ability to rid the office of under-performers.

San Antonio's attorneys are classified employees and, as such, enjoy civil service protection. Based on the results of our benchmarking survey (see summary below), San Antonio is one of the few cities in the nation that still accords civil service protection to its attorneys.

Summary of Civil Service Survey

City	Civil Service	Union	Comments
Dallas	No	No	
El Paso	No	No	
Houston	No	No	
Baltimore	No	No	City ended civil service protection for assistants in 1999.
Boston	No	No	
Chicago	No	No	
Columbus	No	No	All attorneys serve at the pleasure of the City Attorney.
Indianapolis	No	No	All attorneys are considered policy-makers and serve at will.
Los Angeles	Yes	Yes	After two years, the 400 attorneys join one of two unions (staff or management) and may be dismissed only for cause.
Memphis	No	No	
Milwaukee	Yes	Yes	All attorneys are union members except for the city attorney, deputy city attorney and special deputy city attorney.
New York	No	No	City abolished civil service protection for lawyers over 10 years ago), but grandfathered about 10 attorneys (of over 700).
Philadelphia	No	No	
Phoenix	No	No	
San Diego	No	Yes	

Note: Cities that accord civil service protection to attorneys or allow their attorneys to join a union or employee association are indicated by a "Yes."

Additionally, for non-supervisory lawyers, the CAO does not provide a sufficient career path. In interviews and the lawyer survey, many attorneys indicated that the CAO career path was insufficient. Specifically, there were calls for more Attorney IV positions in the department so that senior lawyers can be promoted even if they are not in line to be supervisors (i.e., not in line to be promoted to Deputy City Attorney positions). Our view is that the lack of a sufficient career path for non-supervisory lawyers contributes to the inability of the CAO to retain enough experienced lawyers.

6. Legal Performance, Supervision and Training

Overall, supervision is adequate and reflects what we typically see in other municipal law offices. However, there are opportunities for improvement as noted below.

The CAO's system of legal work supervision relies too much on the subordinates approaching their supervisors when they need help, rather than one that requires supervisors to affirmatively oversee the legal work being done in the office. At the CAO, like many law offices, supervision of legal work is "passive." This means that, while supervisors have open-door policies and are very accessible to their subordinates, the system requires the subordinate to seek out the supervisor when he or she has a question. There is a better way, which is to install a system of active supervision, including periodic case reviews, to reinforce current supervisory practices.

The CAO has adopted office-level performance measures but does not have measures to gauge the performance of individual lawyers and paralegals. In contrast, none of the cities participating in our 1999 Benchmarking Survey employs performance measures. Also, unlike the other cities participating in the 1999 Survey, San Antonio plans to require its lawyers and paralegals to keep detailed time records – the best performance measurement tool in any law office. Finally, the CAO uses the City's standard form for performance appraisals and that form is not sufficiently related to what lawyers do.

For several reasons, chief among them the fact that the CAO is understaffed, the CAO's training of lawyers and paralegals is not as comprehensive or systematic as it should be. Furthermore, reimbursement for continuing legal education courses for CAO lawyers was recently raised to \$350 per year, but that amount is still insufficient to pay for mandatory CLE courses. The inadequacy of expenditures on Continuing Legal Education (CLE) seems to be a particularly acute grievance for many lawyers.

7. Administrative Support Resources and Management

The CAO has decentralized the management of its support staff. Each Deputy City Attorney supervises the support staff that works in his or her division. In the lawyer and support staff surveys, we received many complaints about inconsistent management of support staff. This strongly indicates a need to assign all support staff to one manager in the CAO.

Unlike most law offices of its size, the CAO does not have a strong Legal Administrator's position. Lawyer-managers (i.e., the City Attorney and Deputy City Attorneys) thus spend more time on non-value-added (i.e., administrative) activities than they otherwise should have to. The CAO would benefit greatly from employment of a full-fledged Legal Administrator, a best practice of municipal law offices and something done by almost every law firm and corporate law department of any size. The concept is to hire a manager with a strong background in law office issues to whom to delegate as much of the administrative work of the office as possible. We make such a recommendation later in the report and include a detailed position description outlining authority and responsibilities.

8. Office Space and Technology

The CAO has insufficient office space to house its staff. The CAO is bursting at the seams. Closet-size rooms are being used as offices in some situations. Small windowless offices house more than one lawyer or paralegal. The mezzanine in City Hall is being used for lawyer offices, which creates confidentiality concerns because the Media Room shares a wall with those offices.

Additionally, the quality of some of the space does not meet standards we would expect to see in a law office (due both to the size and to the location of some offices, and the lack of sufficient conference and working space). The City needs to devise short and long-term solutions to the space needs of the CAO, and we have made some recommendations in that regard as well, including offering detailed guidance on the quantity and quality of law office space.

The CAO's use of technology is better than what we typically see in municipal law offices. There are, however, a few opportunities for improvement. First and foremost, the CAO lacks sufficient technical support for its current systems. Unlike many City departments and most law offices of more than 25 lawyers, the CAO does not have any staff dedicated full-time to management of the organization's technology hardware and software applications. This has resulted in the under-utilization of technology resources and more "down time" than that experienced by City departments with dedicated technology personnel.

The other technology issues are related to inadequate technology support. For example, CAO employees have insufficient knowledge concerning the computer applications available to them. Some of the hardware and software are not standardized. There are some concerns about the adequacy of electronic document security. Finally, the implementation of the CAO's matter management system (ProLaw) has taken far longer than should be the case.

9. Outside Counsel Management

The CAO's systems for managing the legal work referred to outside counsel, while consistent with what we see in many other cities, are not enough to ensure high quality and reasonable costs.

Written outside counsel guidelines have been developed by the CAO but they apply only to litigation matters and have not been fully implemented. Responsibility for monitoring the cost and quality of outside counsel is scattered among too many lawyers in the office to be effective, and most such lawyers have insufficient time to adequately oversee outside counsel in the first place.

All matters referred to outside counsel are priced on an hourly basis, which is inherently inefficient and overly costly. Contrast that with the responses to the 1999 Benchmarking Survey where two of the other participating cities reported the use of alternative (i.e.,

non-hourly) pricing schemes. San Antonio does not have billing/payment guidelines in place for non-litigation matters handled by outside counsel. Finally, there is too little competition in the process of awarding legal work to outside lawyers and law firms.

Specifically, there are five shortcomings with regard to the mix of inside and outside legal work and the monitoring and control of outside counsel as follows:

- Too much work is referred to outside counsel because some clients lack confidence in the CAO's legal services and insist that their matters be handled by private lawyers
- Too much work is referred to outside counsel because there are not enough CAO lawyers and paralegals to handle it
- There are insufficient procedures, controls and time for the CAO to adequately monitor and control outside legal counsel
- All legal services referred to outside counsel are priced on an hourly basis
- There is very little competition in the process of awarding work to outside lawyers and law firms

In the aggregate, these problems increase the City's costs for legal services.

Two responses are needed. The first is to improve the system for managing and controlling outside counsel (and in that regard we have made several detailed recommendations and have included forms and documents for managing outside counsel, including engagement guidelines). The second is to move away from hourly pricing and to instill more competition into the work referral process. Our recommendations are presented later in this report.

D. Recommended CAO Strategies

Two broad themes have emerged in our study of the San Antonio's CAO—1) the need to elevate the stature and independence of the legal function and 2) the need to change the culture of the CAO. As summarized below, our seven recommended strategies are designed to address these two critical issues.

Stature and Independence – Compared to what we typically see in major cities – and indeed, compared to in-house law departments of all types – San Antonio's legal function should be elevated in stature. Overall, it is our assessment that too often the CAO is not accorded the status that empowered, fully independent legal counselors merit. Several of our recommendations, such as the following, address this issue:

- Have the City Attorney report to the City Manager for all purposes and name the City Attorney to the City Manager's Management Team (Strategy 1);
- Make lawyer and paralegal salaries competitive with those in other public agencies in San Antonio and with city attorney offices in other major Texas cities (Strategy 2);
- Augment the career path for lawyers and paralegals (Strategy 4);
- Increase money for, and attention to, training throughout the CAO (Strategy 5); and
- Expand and upgrade professional office space (Strategy 6).

CAO Culture – By changing the culture, we mean re-thinking the ways in which the CAO has been doing business for *many years*. Overall, there is a need to bring the culture of the CAO in line with more progressive law offices and thereby enhance its ability to successfully compete for the lawyers and paralegals it needs. The following recommendations are designed to help change the culture:

- A more systematic and comprehensive approach to client service and client satisfaction (Strategy 1);
- Appointment of an internal client service team to spearhead development of the client service program (Strategy 1);
- A new client-centered organizational structure with the substantive law matrix overlay (Strategy 2);
- Eliminating civil service or modifying civil service rules as they relate to lawyers, and by way of the increased flexibility and higher salaries, moving to a system that allows the City Attorney to recruit and retain the best lawyers, and to deal more effectively with marginal employees (Strategy 4);
- Overall, establishing a much greater degree of accountability in the City Attorney's Office, while at the same time creating opportunity and reward for the best and hardest working employees of the office.

Our seven recommended strategies for improving the CAO, each of which contains several recommended tactics, are presented in more detail below. Most of the recommended strategies and tactics can be linked to these two broad themes – the need to elevate the stature of the legal function and the need to change the culture of the CAO.

Strategy No. 1 – Enhance the stature of the legal function and design and implement a strong client service model.

As outlined in the strategy templates set forth in Appendix E, this strategy includes three tactics as follows:

- Increase the stature of the legal function
- Use strategic planning to redefine the CAO's mission and client service role
- Design and implement a comprehensive client satisfaction program

Strategy 1 and the recommended tactics will elevate the City's legal function to the top levels of City government, and reinforce the vital role played by the City Attorney and the CAO. It will better enable the CAO to tailor its services to client needs, resulting in improved client satisfaction, more fulfilling jobs for CAO lawyers, and ultimately, less use of outside counsel. Finally, many clients will receive the desired level of CAO involvement in their business and operational matters.

The best practices related to the overall quality of legal services include the use of client satisfaction surveys and automated work tracking systems. In addition, well-run legal

departments encourage their attorneys to find creative solutions to client problems rather than merely stating why some action cannot be taken (see table below).

Best Practices for Municipal Law Offices – Client Service

Issue	Municipal Law Office Best Practices
Client satisfaction	<ul style="list-style-type: none"> ✓ Clear commitment to client satisfaction as the top service priority ✓ Formal, systematic and regular client satisfaction assessment (e.g., by way of biannual, comprehensive client surveys) ✓ Careful analysis of client satisfaction surveys to determine opportunities for improving services and client communications ✓ Use of client needs data to generate specific performance measures
Timeliness & responsiveness	<ul style="list-style-type: none"> ✓ Pervasive commitment to timeliness of legal services and responsiveness of lawyer and support staff, including use of performance measures ✓ Use of an automated work tracking system that logs all new service requests, notifies client as to the responsible person and expected complete date, and enables management to monitor work timeliness and status
Other	<ul style="list-style-type: none"> ✓ Sufficient interaction of city lawyers with client business and operational issues to become effective advocates on legal matters ✓ Constant encouragement of lawyers to identify creative solutions to client problems, where “no” is the start of the creative legal process rather than the end ✓ Physical location of department counsel in the client department’s office where the volume of work so justifies (the lawyer would continue to report through the legal department organization to the City Attorney)

Perhaps the most significant advantage inherent in an in-house staffing model is the ability of the organization’s lawyers to add value to the client through their intimate familiarity with the operational affairs and legal issues of their clients.

Our recommended tactics are discussed in more detail below.

1. Increase the stature of the legal function.

The City Manager should establish a direct reporting relationship with the City Attorney for all purposes and include the City Attorney as a standing member of the City Manager’s management team.⁴⁶ Having the City Attorney report to the City Manager for all purposes, and placing the City Attorney on the Management Team, is based in part on the experience the consultants have had with both public sector (e.g., the City of Houston Legal Department) and private sector (profit corporations) law departments.

Increasingly so today more than ever, legal issues spring from almost everything a (public or private) corporate entity might consider doing. It is thus very important that the legal function be represented at the highest management levels of an organization if it is to fulfill its intended role of assisting the organization in assessing and managing liability exposure, and ensuring that transactions are structured in compliance with the law from the outset. As mentioned, too often in the past the City Attorney and the CAO

⁴⁶ The City Attorney reports to the City Manager for legal matters, but reports to an Assistant City Manager for administrative purposes. He is not a member of the Management Team.

have been treated as relatively low-level legal functionaries rather than empowered, fully independent legal advisors.

2. Use strategic planning to redefine the CAO's mission and client service role.

A strategic or long-range planning process, even an informal one (with no need for a voluminous, formal planning document), can help a professional services organization adapt its structure and resources to its clients. It provides a platform for a periodic assessment of client needs and a re-thinking of the CAO's mission, the roles of its attorneys and the internal capabilities it will need to meet client needs. Thus, the success of everything envisioned in this strategy hinges on conducting an effective strategic planning process.

Strategic planning in a municipal law office should not be an overly time-consuming process. As mentioned, there is no need for a voluminous report. Instead, the process should result in a list of initiatives decided upon, and a detailed implementation schedule setting forth who is responsible for each part of the plan and the applicable deadlines. An outside facilitator experienced in law office strategic planning would significantly improve the process and the plan.

Strategic planning is nothing more than the systematic asking and answering of three questions – Where are we today? Where do we want to be in the future? How do we get there? These three questions apply to each key area of inquiry – a client-by-client assessment of present and future legal needs; a review of the practice capabilities (core competencies) needed to meet those needs; a review of the human resources required to deliver the core services; and a review of the other resources required to carry out the plan. For each area, once these questions are asked, the planning part of the process involves determining what changes need to be made and the manner in which they will be made, and implemented.

One of the most important outcomes of the strategic planning process should be to clarify the role of the attorneys. The most significant advantage inherent in an in-house legal staffing model is the ability of the organization's lawyers to add value to the client through their intimate familiarity with the business and operational affairs and legal issues of the client. To achieve this requires sufficient interaction of the city's lawyers with client (i.e., departmental) business and operational issues in order to increase the effectiveness of the advocacy and representation in legal matters.

An expanded client service role will require lawyers skilled in business matters. It also will require that, at least for major projects or contracts, the operating departments include a lawyer as part of their project "teams" from the inception. Of course, increasing the amount of lawyer involvement in business matters is not intended as a substitute for client responsibility. It would still be incumbent on the client to make the business and operational decisions after getting legal advice from the lawyer. The lawyer can and should add value to the legal counseling process by thoroughly understanding

business issues and by negotiating deal points in business contracts, but the arbiter of business decisions has to continue to be the client.

Taking on an expanded role in business issues will occur only if there is constant encouragement of lawyers to identify creative solutions to client problems, where “no, you can’t do it that way” is the start of the legal process rather than the end. The City Attorney and his deputies need to encourage lawyers to offer options rather than merely saying a certain action is illegal, and to encourage attorneys to offer broader opinions about proposed contracts rather than merely signing off on them as to form. What the “proper role” for an individual lawyer is depends on the client (department) involved and that client’s needs and wishes. Thus, the role needs to be defined via a client-by-client assessment and cannot be stated as a “one-size-fits-all” strategy.

Certainly some generalizations can be made – for example, in litigation matters there is generally very little need for lawyers to be involved in operational issues, whereas the need exists primarily in transactional matters of all kinds. Training events at conferences of the American Corporate Counsel Association often include the topic of the proper role of lawyers in operational matters and how they can add value to the client’s affairs. Similarly, the legal management literature is replete with articles on this topic (see, for example, the following publications: *Metropolitan Corporate Counsel*; *Corporate Legal Times*; *Corporate Counsel*; *American Lawyer*). This effort should begin with a thorough review of the results of the client survey, followed by meetings with individual clients to define for each client department the desired role for the lawyers, identifying lawyers (both employed lawyers and outside counsel) who are adept at this value-added role, and then using those lawyers to help train others.

3. Design and implement a client service program.

The role of the CAO Client Service Team we are recommending is to be responsible for and spearhead the design of the entire client service program, including training activities and execution of biannual client surveys as a way to measure results. The team should be charged with devising strategies to improve client service and ensuring that the strategies are properly implemented. The team should be comprised of representatives from all levels in the CAO (e.g., a Deputy City Attorney, a staff lawyer or two, a paralegal, the Legal Administrator and one or two members of the support staff). Team members should be those keenly interested in, and good at, client service. Overall, the client service program is intended to be a vehicle for effective and continuous communication between the CAO and its clients.

The foundation of the client satisfaction program should be a pervasive commitment to timeliness of legal services and responsiveness of the lawyer and support staffs. It should include performance measures (e.g., timeliness in responding to client telephone calls or e-mail messages), an automated work tracking system that logs all new service requests, notifies clients of responsible CAO employees and expected completion dates, a management tracking system to monitor work timeliness and status and the regular solicitation of client input for lawyer performance appraisals. These and other

components of a comprehensive client service program should be designed by the Client Service Team after reviewing the client survey conducted as part of this project, and as a component of the strategic planning process recommended above.

To measure improvements in client service, the client program should include a written client satisfaction survey every two years. The survey should use a consistent questionnaire format. In turn, survey results should be used to revise training programs and other activities designed to improve client service. More frequent, but more abbreviated client surveys could be considered after large projects are completed.

Strategy No. 2 - Establish a service-oriented organizational structure.

As outlined in the strategy templates set forth in [Appendix E](#), this strategy includes four tactics as follows:

- Revise the CAO's organizational structure along client service lines
- Establish a subject-matter matrix overlay structure
- Fill the First Assistant City Attorney position
- Improve internal communications

Strategy 2 and the recommended tactics will result in improved legal services. Clients will find it easier to identify the lawyers who are assigned to serve their departments, and CAO managers will find it easier to identify and deploy subject-matter expertise where it is needed. The filling of the important First Assistant City Attorney position will strengthen CAO management, supervision and training.

Best organizational practices for municipal law offices include a flat matrix organizational structure, and effective, cross-division communications between lawyers and staff (see table below).

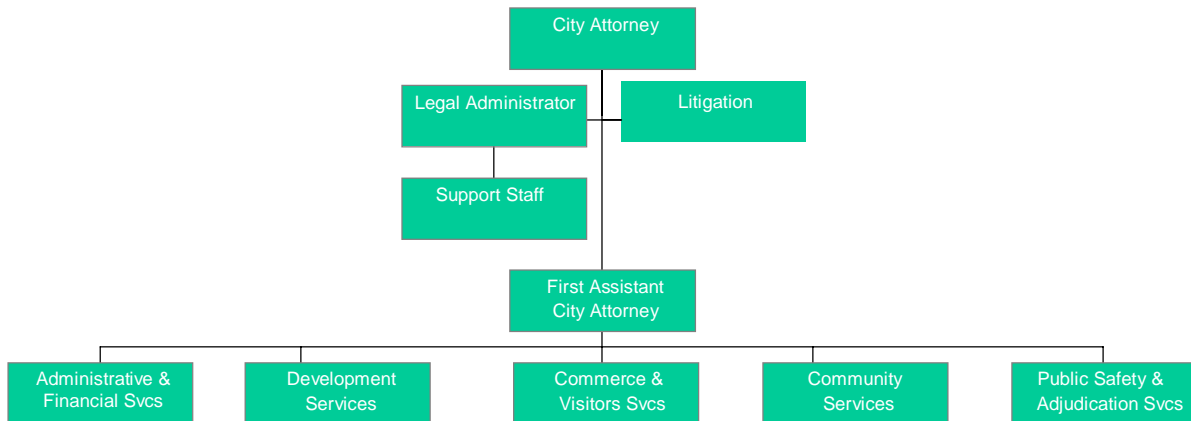
Best Practices for Municipal Law Offices - Organizational

Issue	Municipal Law Office Best Practices
Structure	<ul style="list-style-type: none"> √ A matrix structure grouping lawyers by subject-matter orientation for supervision purposes and program-centered orientation for client communications purposes √ Clear assignment of department counsel to heavy users of legal services where the department counsel coordinates CAO resources in support of that department √ A flat organizational structure with minimal management lawyers required for the smooth functioning of the law department √ Assignment of all support staff (everyone but lawyers and paralegals) to a skilled law office administrator for all non-case matter purposes
Other	<ul style="list-style-type: none"> √ Modern human resources practices (e.g., performance appraisal & mentoring) √ Effective, cross-division communications between lawyers and staff to overcome the silo effect inherent in a law office with several internal divisions √ Informal, regular in-house meetings to discuss organizational issues √ Technology committee to define technology needs and drive technology initiatives

Our recommended tactics are discussed in more detail below.

1. Revise the CAO's organizational structure.

The recommended organizational structure includes six major divisions – five drawn along client-oriented lines, plus litigation – as illustrated by the organizational chart below.



The proposed organizational structure is client-oriented – it makes it simple for each Assistant City Manager and department head to determine the attorney to contact for specific problems. Furthermore, the structure is a public sector equivalent of the client service manager concept often seen in law firms, where specific partners are assigned responsibility for coordinating all service needs of specific clients. Our recommended alignment of client departments and programs under the proposed CAO structure is shown in greater detail in the diagram below.



The Deputy City Attorney heading each CAO Division would be charged with coordinating the delivery of legal services to each city department assigned to that Division, and for ensuring an effective relationship between the department and the CAO. Depending on the number of client departments assigned to a given Division, the client

service manager role for some departments might be delegated by the Deputy to one or more senior attorneys in the Division. The points, however, are that the CAO should designate a lawyer to be the client service manager of every city department or program, and that no matter who is charged with the client manager role – the Deputy City Attorney or an Assistant City Attorney – the role is the same.

The client manager is responsible for maintaining a close relationship with the client department and maintaining continuous communication to ensure that the department's needs are being met. The manager is also required to utilize the matrix overlay (see below) to identify the lawyers and paralegals who can best deliver needed legal services to the department, for marshalling those resources, and for making sure that they are deployed accordingly. Thus, the client service manager should be someone who is very knowledgeable regarding the workings and needs of the client department, but who is a legal generalist capable of doing triage on legal problems and assembling the legal resources needed to solve the problems.

The proposed organizational structure would result in several important changes, described in detail below. What is most important about it is the concept of structuring the CAO to be consistent with the organizational structure of the city so that CAO Divisions reflect the overall structure of city government. Our recommended changes do that, but it might be necessary for the City Attorney to revise our design based on his more extensive knowledge of city departments and his own staff. Furthermore, the City Attorney should ensure that the final structure is balanced in terms of the span of control of each Deputy City Attorney heading each CAO Division.

The recommended changes to the present organizational structure of the CAO include the following:

- Contract Division – One CAO Division (i.e., the Contract Division) would be eliminated. The work of the Contract Division would be subsumed among the remaining divisions as those lawyers in the Contract Division are reassigned, but they would be designated (via the matrix overlay – see below) as functional contract specialists.
- Development & Financial Services Division – This division, like all the others except Litigation, is being renamed to reflect the recommended realignment of city departments. Furthermore, like the other divisions, various city departments are being newly assigned to it, while others are being moved elsewhere. These new assignments are designed such that the CAO Divisions will now reflect the organizational structure of city government as a whole.
- Litigation Division – The Litigation Division would be split into two divisions (Litigation and Public Safety & Adjudication Services) because the present structure requires an excessive span of control for the Deputy City Attorney. Simply put, the Division is too large to be effectively supervised by one person. The Divisions, as realigned, help ensure balanced spans of control.
- Risk Management Division – Under the CAO's new alignment of client departments and programs (see above diagram), the City's new Risk Management Department,

after being spun off from the CAO (as recommended elsewhere in this report), would be a major client department of the CAO's new Litigation Division. The CAO's Litigation Division would represent any city department that needs general litigation services. It would comprise the Deputy in charge of litigation and the lawyers and paralegals working in general and workers' compensation litigation.

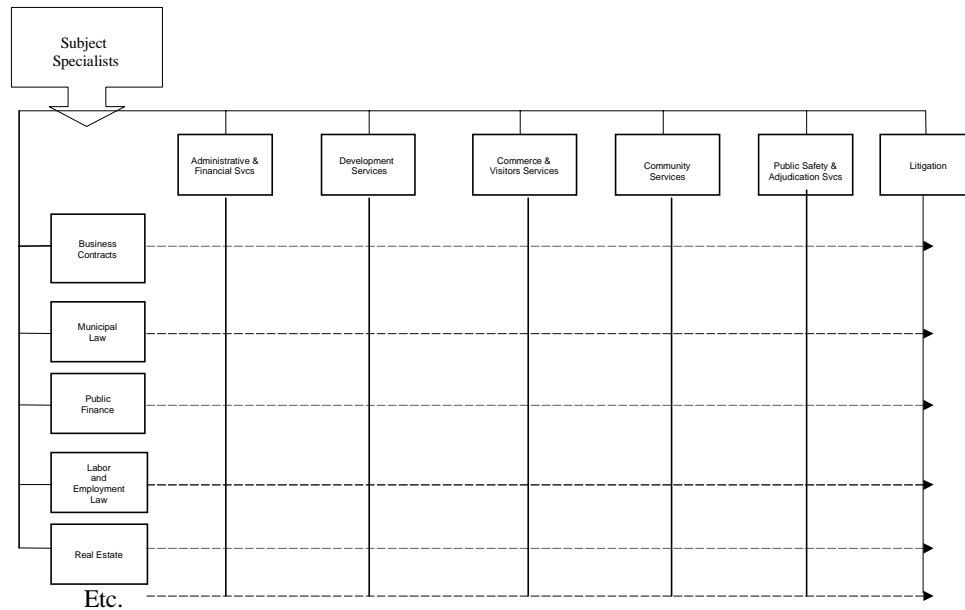
- Public Safety & Adjudication Services Division – The new Public Safety & Adjudication Services Division would have primary responsibility for the Police, Fire and Code Compliance Departments and Municipal Courts. It would consist of the lawyers and paralegals assigned to Police and Fire (from the current Administration Division), and the lawyers and paralegals assigned to the Municipal Prosecution section of the present Litigation Division. Specific client service managers would need to be identified for this division. That is, the Deputy City Attorney or senior attorneys would need to be charged with coordinating fulfillment of the needs of each city department falling under this CAO Division (i.e., the Code Compliance, Fire and Police Departments and the Municipal Courts).

Even with the recommended changes to the organizational structure, many City Departments would continue to be served by the same CAO Division as at present (albeit with new names), since much of the present structure is being maintained. The major changes, however, are the explicit assignments of city departments to specific CAO lawyers for maintaining effective relations and coordinating needs, and the formal matrix overlay that will assist in identifying subject matter expertise wherever it is resident in the CAO so that the appropriate resources can be deployed to solve the legal problem of any client (explained immediately below).

The majority of the lawyers and paralegals presently assigned to work of specific departments and programs will remain in their current CAO Division. This is so because many departments and programs will still be served by the same CAO Divisions. Where a department has been transferred to another CAO Division (e.g., such as Code Compliance), the lawyers and paralegals now doing the work for that department or program would be reassigned to the CAO Division now having responsibility for them.

2. Establish a subject-matter matrix overlay structure.

In recognition of the need to formally identify all CAO subject matter expertise, attorneys, assigned primarily to the city departments that fall within the respective Division of the CAO, would be given secondary, functional assignments as "Subject Specialists" as illustrated by the functional matrix below.



The secondary functional assignments illustrated above would formally recognize the technical legal assistance responsibilities assumed by lawyers throughout the CAO for core competencies in which they have the greatest expertise.

To re-cap, under the proposed organizational model, attorneys would have lead responsibility for representing certain departments (and be assigned to the CAO Division that represents those departments), but also be designated as subject matter experts (e.g., a contract specialist could be assigned to work on a matter for any city department). Attorneys managing the services for a department (i.e., generally the Deputy City Attorneys) would be responsible for using the functional matrix to identify lawyers with the technical competencies needed by their client departments, and for ensuring that the lawyers with the expertise work on the problem of the clients that need it.

As mentioned, we have used our knowledge of the CAO and the city to assign city departments to CAO divisions. It will be up to the City Attorney to make the final determinations regarding the assignment of lawyers to the divisions, based on his intimate knowledge of the lawyers in the CAO and the needs of specific city departments. Where possible, the City Attorney should align client assignments with legal expertise. For example, the attorney with expertise in franchise law should be assigned to the division that has lead responsibility for the department that coordinates franchise contracts.

3. Fill the First Assistant City Attorney position.

As can be seen from the organizational chart, the First Assistant City Attorney plays a prominent role in practice management – with the exception of the Deputy City Attorney

in charge of litigation, the other Deputy City Attorneys report to the First Assistant City Attorney. The CAO needs a First Assistant who has extensive experience in municipal law matters and who is an experienced manager. Based on difficulty in filling this position, and in light of the compensation benchmarking, the salary for the First Assistant position should be increased significantly (see Strategy 4) and then the search begun.

The First Assistant should be charged with managing all the legal work of the CAO except litigation, in his or her role as the supervisor of all but one of the Deputies. The First Assistant should serve as the training coordinator for lawyers and paralegals, ensuring that needed training programs are developed or identified and that the professionals in the office get the training they need (see the related strategies on training). The Legal Administrator should be charged with responsibility as the training coordinator for the support staff, and the Senior DSS as the technology training coordinator for the entire CAO.

4. Improve internal communications.

The recommended matrix structure will go a long way toward improving inter-divisional communication and collaboration. It will require attorneys with cross-cutting technical assignments (e.g., contract management) to work together on teams regardless of their divisional assignments. Regular and well-organized inter-divisional and CAO-wide meetings will also help overcome the silo effect inherent in a law office with several internal divisions. Using a team management approach to implement the recommended strategies will also help improve communications.

Technology can be a real asset in improving staff communications. Implementing an electronic document and information-sharing repository – although a recommendation based in technology – is being addressed in this strategy because it will assist in improving internal communications. The electronic repository is an important priority. A beginning has been accomplished with the contract manual, but the process should continue by creating an opinion repository, as well as litigation forms. Establishing a technology committee to define technology needs and drive technology initiatives will also be an effective communications mechanism.

Strategy No. 3 – Develop a service-oriented staffing model.

As outlined in the strategy templates set forth in Appendix E, this strategy includes three tactics as follows:

- Develop a new staffing model
- Add new attorney and paralegal positions
- Increase the utilization of paralegals

Strategy 3 and the recommended tactics, by increasing staffing, will make legal services more timely, and enable the CAO to reduce the number of matters that have to be referred to outside counsel. This strategy will improve the CAO's cost-effectiveness

through an increased ratio of paralegals to lawyers and the improved utilization of paralegals in the delivery of legal services.

Best organizational practices for municipal law offices include the effective utilization of paralegals (see table below).

Best Practices for Municipal Law Offices - Productivity

Issue	Municipal Law Office Best Practices
Staff Utilization	<ul style="list-style-type: none"> √ Lean support staff (e.g., no more than 0.50 support staff per lawyer) √ Strong paralegal support (e.g., at least 0.25 paralegals per lawyer) √ At least one dedicated technology staff member for every 20 to 30 end-users
Efficiency	<ul style="list-style-type: none"> √ Average annual legal costs to \$200,000 to \$250,000 per attorney √ Average annual legal costs of \$10 to \$20 per city resident √ Average ratio of 10,000 to 20,000 city residents per in-house √ Average ratio of 5,000 to 12,000 city residents per staff (lawyers and support staff)

The expenditure and staffing ratios are merely guidelines. The resource requirements of a municipal attorney's office may vary from one jurisdiction to another (and from one year to the next) depending on numerous factors.

Our recommended tactics are discussed in more detail below.

1. Develop a new staffing model.

The recommended staffing model should be developed in conjunction with the informal strategic planning process cited above. It should be based on the new organizational structure and core competencies. It should reflect the redefined lawyer role and recommended career path tactic. It also needs to incorporate the results of time-based case reports that can be generated from the matter management system.

First, the strategic planning team established by the City Attorney should define the office's core competencies (e.g., annexation, zoning and traffic) by CAO division. The CAO has two basic types of core competencies—transactional and litigation:

- Transactional – the day-to-day functions of a municipal law office (e.g., contracts, advisory opinions for departments, and counsel for boards and commissions); and
- Litigation – the enforcement of the City's various codes, defending the City from those who seek to impose liability, and pursuing litigation against individuals or companies that have breached City contracts.

San Antonio's CAO should maintain core competencies in the following subject matter areas:

- General municipal law – miscellaneous regulatory topics where non-compliance can result in liability (e.g., open meeting requirements, contract authority, board and commission authority, and public access to public records);

- Contracts law, drafting and negotiation;
- Personnel law – federal law, state law and civil service rules pertaining to uniform and non-uniform employee hiring, discipline and termination, discrimination and workers' compensation;
- Public safety – police liability issues (e.g., search warrants, arrests and detention), excessive force matters, collective bargaining with Police and Fire Unions, and other public safety issues;
- Real property and development – real property law, eminent domain, property condemnation, annexation, zoning and permits;
- Prosecution and code enforcement – enforcement of civil codes (e.g., nuisance) and minor criminal matters and related procedural requirements;
- Municipal liability – federal and state laws restricting municipal liability; and
- Public finance – tax-exempt financing (e.g., general obligation and revenue bonds) and revenue collections.

There also are certain specialty areas where the City of San Antonio, because of its particular needs, will need to maintain sub-core competencies (e.g., aviation, environmental, franchise and public utility law).

Next, the planning team should project caseload demands and define long-term staffing requirements by division. The City Attorney then should seek approval to adjust staffing levels as needed to meet projected workload demands. This process of using the staffing model to assess the staffing needs of the CAO should then be repeated annually to assist in the budgeting process for the office⁴⁷.

2. Add new attorney and paralegal positions.

Based on the comments of clients, interviews with CAO employees, caseload reports, and our prior experience with municipal law departments, the CAO appears to need four new attorney positions. The CAO also appears to need three new paralegal positions.⁴⁸

Every indicator points to the need for additional lawyer and paralegal staffing.⁴⁹ Benchmarks show many fewer lawyers than in other cities (28,262 city residents per attorney in San Antonio versus 14,185 in the average of the other cities in the 2000 benchmarking survey). With regard to paralegals, benchmarks show fewer paralegals per

⁴⁷ Accurate assessment of the resources needed to meet the demand for legal services obviously has to take outside counsel into consideration – i.e., the city delivers legal services through internal lawyers (employees) and external lawyers (outside counsel). The CAO should use the Preferred Provider Program (see Strategy 10) to outsource legal work that cannot be done internally, and the internal staffing assessment needs to take into consideration the work being referred to outside counsel.

⁴⁸ Three new paralegals would bring the CAO's paralegal/attorney ratio to 0.25, a common ratio in city law offices).

⁴⁹ There are no indications that the CAO has insufficient support staff. Of course, as additional lawyer and paralegal positions are created, there will be a need for additional support staff as well.

lawyer than that we typically see (a paralegal to lawyer ratio of 0.17 in San Antonio versus other city averages of 0.32 and 0.28 in the two benchmarking surveys).⁵⁰

Additionally, the City will be able to add legal staff and still keep costs at reasonable levels. According to the 2000 Benchmarking Survey, the San Antonio CAO budget as a percentage of the total city budget is less than half that of the other cities (0.57% versus 1.26%). San Antonio spends \$5.50 per city resident to staff and operate the CAO, compared to an average of \$16.93 (more than three times) for the other cities.

Other fact-finding clearly supports the case for more legal staff. Interviews and survey responses of clients, lawyers and paralegals indicate that the City's legal demands will rise and that there are too few lawyers to meet current demands. Over 30 percent of the CAO's clients indicated their legal needs would increase during the next 12 months, double the benchmark average. The written comments in the questionnaires from clients and from CAO staff are rife with calls for more legal staff.

CAO management is in the best position to accurately assess the specific staffing needs of each division. They should be charged with doing so, after completing the planning process mentioned earlier, consistent with our overall recommendations. Also, analysis of the need for new staff should not be finalized until the new organizational and matrix structures are implemented.

3. Increase the utilization of paralegals.

The under-utilization of paralegals is a common problem in law offices. In San Antonio, this problem is the result of several factors. Some lawyers do not want to use paralegals. Of those lawyers who are willing to use paralegals, some may not know how to effectively use them. Others may not use paralegals simply because there are not enough.

The problem with ineffective utilization of paralegals is that the CAO is "overpaying" for its staff because lawyers end up handling matters that could be done by legal assistants at much less cost. The same is true regarding paralegals and secretaries – that is, the effort to improve the utilization of legal assistants needs to ensure that paralegals are not handling clerical tasks that could be done by members of the support staff. The contemplated training will help lawyers make more effective use of paralegals, and assist the CAO in making sure that all work is being handled at the appropriate level (i.e., lawyer, paralegal or support staff).

Strategy No. 4 – Attract and retain outstanding lawyers and paralegals.

As outlined in the strategy templates set forth in Appendix E, this strategy includes three tactics as follows:

⁵⁰ The significant experience the consultants have with law offices of all types – including municipal law departments – indicate that overall there should be at least one paralegal for every four lawyers. Some law departments have higher ratios and the trend clearly is to using paralegals more and more in the delivery of legal services. Over the long-term, the CAO should strive for a paralegal to lawyer ratio of 0.30.

- Increase lawyer and paralegal salaries
- Enhance the career path for lawyers and paralegals
- Eliminate or modify civil service rules

Strategy 4 and the recommended tactics will increase the CAO's competitiveness in hiring and retaining the lawyers it needs to deliver high quality legal services to the City. Through the elimination of civil service protection for attorneys, it will enhance the City Attorney's ability to improve lawyer performance and improve office morale.

Best organizational practices for municipal law offices include competitive lawyer compensation and continual professional development (see table below).

Best Practices for Municipal Law Offices - Compensation

Issue	Municipal Law Office Best Practices
Compensation & promotion	<ul style="list-style-type: none"> ✓ Lawyer compensation levels that, at a minimum, are competitive with comparable positions in other government law offices in the metropolitan area ✓ Periodic use of salary and benefit survey data to gauge the market competitiveness of lawyer compensation ✓ A dual-ladder career path (i.e., management or formal recognition of the achievement of extensive subject matter expertise) ✓ Visible rewards for employees with superior client satisfaction ratings

Compensation, a major issue in most public sector law organizations, bears directly on the frequency of turnover and the ability of the law office to attract and retain the legal talent it needs to deliver high quality services to the City.

Our recommended tactics are discussed in more detail below.

1. Increase lawyer and paralegal salaries.

Although a comprehensive compensation survey was *not* within the scope of the project – and thus, one was not done – the consultants did compare several sources of existing, relevant compensation data with salaries in the CAO. These comparative compensation studies (see Appendix H) clearly show below-market salaries for lawyers and paralegals. This is true compared to other government agencies in San Antonio and to the municipal law offices in other major cities in Texas.

Based on these compensation benchmarks, we recommend that the City conduct a comprehensive compensation survey of lawyer and paralegal salaries, and that it then increase the salary structure in line with what the study shows. In conducting the survey, we strongly recommend that only major Texas cities (i.e., those of more than 500,000 people) be included. Additionally, the survey should include other government lawyers in the San Antonio area.

Significant salary increases at all levels will be needed to make the CAO competitive with other public sector legal employers, both other governmental agencies in the San

Antonio area and municipal law offices in other major Texas cities. There is no way for the CAO to compete with large private law firms, and it should not try. The data in Appendix H makes that obvious.

As an interim step—pending the completion of a comprehensive compensation survey—we recommend that the CAO use some of the funds that have been set aside to begin the implementation phase to reward the best performers. That is, rather than awarding across-the-board pay increases for all lawyers, the CAO should distribute these interim one-time adjustments based on performance. The top performers should receive the bulk of the available funds, average performers should receive some of the money, and below-average performers should receive nothing. As with our recommendations elsewhere in this report regarding civil service, the CAO should begin linking compensation to the management of performance.

In addition to salary increases, the CAO should consider other steps to attract and retain the best lawyers. Examples of such programs that are already in place in the City include flexible work schedules and tuition reimbursement. Staff should be encouraged to take advantage of the existing programs to further their career development. Other measures that the CAO could institute to attract and retain staff include free parking and student loan repayment assistance.

2. Enhance the career path for lawyers and paralegals.

A dual-ladder career path is needed to help the CAO retain experienced and outstanding lawyers whom, for whatever reason, will not be promoted to Deputy City Attorneys. To that end, the CAO should create sufficient non-supervisory, high-paying attorney positions among the highest classifications. For example, it could convert three to four lawyer positions to Attorney IV positions, and convert three Attorney I positions in the new Public Safety & Adjudication Services Division (formerly the Municipal Courts section) to Attorney II positions. Each division in the CAO should have enough high-paying positions to create a sufficient non-supervisory career path for top performers.

Also, it is very important to use these new positions to reward and help retain productive lawyers. Promotion into these positions should be earned on merit, not years of service. These are *not* supervisory positions but instead are being created to enhance the career path of the CAO's best non-supervisory lawyers, to help the City retain its best performers. Although these are not supervisory positions, however, it is envisioned and expected that the persons filling them will be charged with serving as mentors and trainers of less experienced lawyers. Apart from the "normal" lawyering duties, serving in mentoring and training roles should be required of Attorneys IV (or other high-paying, non-supervisory positions).

On a related career path matter, assignment to the municipal prosecution function as the starting place for all newly employed lawyers should be abandoned and continued only for those who plan to be litigators (as opposed to transactional lawyers), and for litigators, only for those who are entry level (as opposed to laterally hired litigators). The present

system of assigning all newly hired attorneys to the municipal prosecution function places the CAO at a competitive disadvantage in recruitment. An attorney interested in municipal law who has the ability to be hired elsewhere will not necessarily be interested in being a prosecutor. Additionally, those suited for prosecution work may not have the background or desire to be transactional or municipal lawyers.

A career path for the office's paralegals should be developed as well. This could be by instituting a four-tiered structure (e.g., Paralegal I, II, III and Senior Paralegal) or a more flexible broad-banding scheme. Like the career path for lawyers, promotion from one tier to the next, although requiring a certain number of years in the lower tier, should in no way be automatic simply by remaining employed for that number of years. Instead, only those paralegals who have consistently performed well (based on performance appraisals and file reviews) should be promoted, in accord with established procedures. If the career path becomes an entitlement based on seniority, it will be meaningless and will serve only to increase compensation costs for the CAO.

3. Eliminate or modify civil service rules.

The civil service rules applicable to attorneys should be eliminated or modified. In our view, elimination of civil service is the preferred option. All lawyers should serve at the pleasure of the chief legal officer (i.e., the City Attorney) as is common in most organizations.⁵¹ Because legal services are qualitative in nature, it is difficult to discipline a lawyer through a civil service system. Furthermore, civil service eliminates flexibility in promotions. As under-performers go undisciplined because of civil service, morale suffers. As top-performers go without rewards (promotion or compensation) because of civil service, it also suffers.

The primary benefit in eliminating or reforming civil service rules is the flexibility to promote or otherwise reward those attorneys who are hard working and excellent performers. Thus, the elimination or reform of civil service will help establish a more meaningful career path for lawyers. Because removal of civil service protection is likely to be perceived by the lawyers as their having lost something of value, we strongly recommend tying compensation increases to the change or elimination of civil service rules. The attorneys need to be convinced that the result of these actions will be a significantly increased ability of the CAO to promote and reward those lawyers who are working the hardest and are best at serving the legal needs of the city.

Our research has uncovered no major cities (in Texas or elsewhere) that provides civil service protection to lawyers. Still, if the City determines that it would not be practical to eliminate civil service protection at this time, it should consider amending the civil service rules as follows:

⁵¹ With removal of civil service protection, it is important that it be made clear that all lawyers in the CAO serve at the pleasure of the City Attorney and only the City Attorney. i.e., the lawyers should be insulated from the politics of city government such that neither the City Manager nor City Council can discipline or fire them. This responsibility should be reserved exclusively to the City Attorney.

- Amend Civil Service Rules X, XI and XII to allow the CAO to streamline recruitment and hiring procedures for licensed attorneys (note, however, that the CAO already substitutes the interview process for examinations and double-fills its positions; in addition, the CAO should rely on licensing for the eligibility list and eliminate the certification requirement);
- Amend Civil Service Rule XV to allow the CAO to develop a streamlined and more qualitative promotional process for attorney positions; and

The objective of such rule changes would be to increase the City's ability to hire qualified attorneys and retain its top performing lawyers.

Strategy No. 5 – Enhance performance, supervision and training.

As outlined in the strategy templates set forth in Appendix E, this strategy includes five tactics as follows:

- Develop performance measures for lawyers and paralegals
- Ensure the effective use of the timekeeping system
- Enhance the quality control and oversight of legal work
- Update the employee appraisal process
- Improve the training program

Strategy 5 and the recommended tactics, including performance measures, timekeeping reports and other management reports, will strengthen the ability of supervisors to gauge and monitor the performance of lawyers and paralegals. A more relevant appraisal form will generate more meaningful performance feedback to lawyers. A formal system of file reviews will improve supervision and quality control. Better management information will support more effective resource planning. By appointing training coordinators, developing formal training plans, and enhancing other training resources, the CAO will enhance the quality of legal services delivered to clients.

Best practices for municipal law offices include effective caseload management practices and timekeeping systems (see table below).

Best Practices for Municipal Law Offices – Supervision & Training

Issue	Municipal Law Office Best Practices
Work assignment & supervision	<ul style="list-style-type: none"> ✓ Appropriate and efficient delineation of lawyer, paralegal and clerical work ✓ Continual reassessment and reengineering of lawyer, paralegal and clerical work and resultant readjustments of staffing mix ✓ Clear distinction of functions that must, by law or custom, be handled by the City Attorney, from those that may be delegated ✓ Availability of supervisors to assist subordinates with day-to-day matters ✓ Close supervision of legal work via regular, face-to-face file reviews

Best Practices for Municipal Law Offices – Supervision & Training (cont.)

Issue	Municipal Law Office Best Practices
Caseload management	<ul style="list-style-type: none"> ✓ Monthly caseload reports (by attorney and case type) to monitor individual attorney case status and office-wide workloads ✓ Caseload assignment methodology for lawyers and lawyer-supervisors based on case complexity and time demands as well as lawyer experience and training ✓ Case performance measures for lawyers and paralegals (e.g., case volume by type, case handling time, and hours expended per matter by type) ✓ Effective use of detailed timekeeping data with caseload reports
Timekeeping	<ul style="list-style-type: none"> ✓ Recording of all lawyer and paralegal matter-related time by specific matter in appropriate time increments (e.g., hour or 15 minutes) ✓ Rigorous enforcement of timekeeping rules and timesheet procedures ✓ Use of time records (combined with caseload reports) to determine staffing needs and gauge lawyer and paralegal performance
Professional development	<ul style="list-style-type: none"> ✓ Regular monitoring of each lawyer's annual continuing legal education (CLE) credits to ensure that no legal licenses are jeopardized ✓ Ample time and funding for lawyers to meet CLE requirements ✓ Continual client satisfaction training ✓ Training lawyers and paralegals regarding sound timekeeping practices ✓ Sufficient training for managers and supervisors (e.g., work delegation) ✓ Effective use of computer-based training (CBT) and Web-based training (WBT)

Our recommended tactics are discussed in more detail below.

1. Develop performance measures for lawyers and paralegals.

The CAO should expand its use of performance measures from the organizational level to the individual employee level. Possible performance measures (other than those derived from timekeeping, which are discussed below) could include acceptable caseload ranges for litigators (by type of matter) and non-litigators (by type of matter), the number of “billable” hours worked by individual lawyers, the length of time it takes to draft and issue a formal opinion and the time required to draft a contract. A qualitative measure might include a client satisfaction rating. CAO supervisors and staff (serving on a task force we are hereby recommending), with their intimate knowledge of each Division’s work, should design the full panoply of performance measures for each CAO Division.

2. Ensure the effective use of the timekeeping system.

The CAO’s performance management system should include timekeeping measures. The CAO should ensure that its new timekeeping system is properly leveraged to produce useful management reports. Timekeeping, and caseload reports containing timekeeping data, will serve as two valuable performance measures for lawyers and paralegals. For example, caseload reports could track time expended per case, broken down by lawyer (or paralegal), and for each, by type of matter. Open case status reports would enable the CAO to assess the time required to handle matters, by type, from inception to closing.

The reports that arise from detailed, matter-by-matter timekeeping are the most valuable management tools available to any law office, including government legal agencies.

Furthermore, accurate time records (when combined with caseload reports) help a law office accurately assess staffing needs (and should be used for that purpose and to ensure equitable workload distribution), in addition to providing a wealth of data regarding the individual performance of lawyers and paralegals. As such, it is important that all CAO lawyers and paralegals record matter-related time, by specific matter, and in appropriate time increments (i.e., tenths of an hour). Given the reluctance of many legal professionals to record their time, rigorous enforcement of timekeeping policies and timesheet completion will be required.

The best managed in-house law departments require detailed matter timekeeping. Few of them, however, charge the applicable cost of the time back to clients (departments). Doing so tends to greatly inhibit clients from seeking legal advice in a timely manner at an early stage in the process.

Once designed, performance measures for lawyers and paralegals should be tied to performance appraisals, and in combination with the appraisals, should be linked to promotion and compensation decisions. The performance measures should not be utilized in any mechanistic or formulaic way to arrive at performance ratings, but instead should be one part of the CAO's overall performance assessment system for its lawyers and paralegals.

3. Enhance the quality control and oversight of legal work.

The CAO should implement a complete supervisory matrix, including a formal system of face-to-face file reviews for lawyers and paralegals, better training and mentoring and more effective discipline. Mentoring is already generally effective, but supervisors should be encouraged to increase this hands-on supervision. One way to do so is to formally utilize Attorneys IV for day-to-day guidance of less experienced lawyers, as recommended in Strategy 4.

The major new oversight initiative should be the file review system just mentioned, with the frequency of the reviews depending on the experience of the person whose work is being reviewed. At a minimum, the formal file review system should include the following features or requirements:

- File reviews should be used to assist the subordinate in handling the matter more effectively and efficiently, as well as to identify problems or other things that need to be addressed.
- All files being handled by the subordinate (lawyer or paralegal) should be included in the review, and the supervisor should use a master case list to ensure this. (By supervisor we mean the Deputy City Attorney in charge of the division in question.)
- File reviews should be face-to-face, i.e., with both the supervisor and the subordinate lawyer or paralegal present.
- They should be linked with performance measures, the employee appraisal system, and the performance monitoring (disciplinary) process, to provide a comprehensive view of individual lawyer and paralegal performance.

- The frequency of file reviews should be determined by the amount of experience of the subordinate and the supervisor's familiarity with the subordinate's work, e.g., monthly for any new employees and for lawyers of between zero and five years of experience; quarterly for lawyers of between six and 12 years of experience; semi-annually for all others.
- Notes of the file reviews, documenting required actions and shortcomings, should be recorded in a prominent place in the file itself. Previous notes should be reviewed at the beginning of each file review, to determine whether the subordinate has accomplished the tasks noted during the earlier review.
- The City Attorney should delegate to the First Assistant (when one is hired) responsibility for ensuring that Deputies are fulfilling their duties to perform effective file reviews. The First Assistant should keep a log to ensure that file reviews are completed by supervisors in a timely manner, and should sit in on some of them to ensure consistency of approach and thoroughness.

4. Update the employee appraisal process.

The CAO should implement a more thorough annual performance appraisal process. The CAO should consider a more comprehensive lawyer appraisal form (see [Appendix I](#) for a model form and suggested process). The CAO should also increase accountability through more thorough and timely performance appraisals, and by soliciting client input into annual evaluations.

This tactic should be undertaken in conjunction with training CAO supervisors in modern employee discipline techniques. The CAO should use a certified trainer to provide this training. The City has a certified trainer program and the CAO should use this program to fullest extent possible.

As recommended earlier in Strategy 4, the City should eliminate civil service protection for lawyers or amend civil service rules to increase the authority of CAO supervisors to effectively discipline marginal performers and reward good ones. The CAO should develop extensive, qualitative standards for attorney discipline and dismissal and submit them to the Civil Service Commission for review. The CAO should have the ability to discipline or dismiss attorneys based on a sound determination that they lack the characteristics to effectively serve their clients.

5. Improve the training program.

The City Attorney should appoint three training coordinators. He should designate the First Assistant City Attorney as the training coordinator for the office's lawyers and paralegals on substantive and skills issues, as well as the training coordinator for management training. The Legal Administrator should serve as the training coordinator for the support staff, and the DSS should do so with regard to technology training for all lawyers and staff in the CAO.

The training coordinators should be charged with working with three training teams to develop appropriate internal training curricula and to identify reliable external training sources. They should be required to make sure that the teams meet, do their work, and fulfill their responsibilities within allotted timeframes. Performance of the individuals in these three positions should be rated as part of the annual appraisal process. All training should be linked to the office's core competencies.

Substantive legal training from CLE courses and in-house training sessions is not enough. The CAO should also prepare a staff development plan to ensure adequate training in lawyering, lawyer performance management, and paralegal skills, as follows:

- Lawyering skills training should include courses in effective legal writing, oral presentations, client advocacy, and negotiation techniques, and, for litigators, critical litigation skills (e.g., direct and cross examination, depositions, opening statements, closing argument, and handling expert witnesses);
- Performance management training for staff lawyers should include training in time management, file management, client management and relations, paralegal supervision and support staff utilization; and
- Paralegal training should include many of the courses mentioned above, and in addition, ways to encourage lawyers to more effectively utilize paralegals and other topics related to working with paralegals

Also, training should be required of all CAO supervisors in basic management and supervision techniques and practices. The City's management training classes will likely meet many of these needs.

The City should increase the annual reimbursement limit for CLE courses from \$350 to \$750 per year for each lawyer. It also should take steps to ensure the full sharing of training materials among CAO staff and leverage outside counsel for training purposes as set forth below.

Effective training materials and information should be shared. Those attending outside training should be required to make the materials available to others in the office, to evaluate the value of the course to help others determine whether to attend, and to make a brief presentation regarding the highlights of the training sessions.

Outside counsel should be leveraged for training purposes. Outside counsel handling complex matters should serve as trainers for CAO lawyers. If outside counsel is retained for any significant litigation or transactional matter, employed attorneys should be assigned to work closely with them so that the benefit of the expertise can be transmitted in-house.

Strategy No. 6 – Improve the management and utilization of support resources.

As outlined in the strategy templates set forth in [Appendix E](#), this strategy includes five tactics as follows:

- Establish a strong Legal Administrator position
- Hire a Senior Department System Specialist (DSS)
- Adopt a technology standardization and security policy
- Complete the implementation of the matter management system
- Develop a plan for meeting the CAO's space needs

Strategy 6 and the recommended tactics will have several benefits, including the following:

- The CAO's lawyer-managers will be relieved of many administrative tasks, giving them more time to deliver and supervise legal work and increasing their job satisfaction
- An experienced Legal Administrator will ensure more effective supervision of support staff and administrative tasks
- On-site technical systems expertise will accelerate the resolution of technology problems, improve the utilization of technology by CAO employees and strengthen the enforcement of office-wide standards for authorized computer programs
- A fully-implemented matter management system will enhance the CAO's ability to track and manage cases
- More professional working conditions will improve lawyer and paralegal morale

Legal technology has made great strides in recent years. The legal profession is developing cutting-edge solutions for tackling the institutional inefficiencies of a formerly notoriously paper-driven industry. Some of these best practices are exemplified by the technology initiatives summarized in the table below.

Best Practices for Municipal Law Offices – Technology

Issue	Municipal Law Office Best Practices
Planning	<ul style="list-style-type: none"> √ A short-term technology plan specifying approved software initiatives for the next 12 months, platform implications and resource requirements √ A long-term technology plan addressing emerging technologies, staffing and advanced training needs, and Internet/Intranet/Extranet strategies
Matter management	<ul style="list-style-type: none"> √ A matter management system to organize and track critical matter data (e.g., matter descriptions, involved parties, assigned legal staff and financial data) √ A docketing and calendaring system to schedule key case dates (e.g., court dates and filing deadlines) and events (e.g., contract renewal, depositions and discovery) √ Entity management software to track outside firms, third-party vendors and clients, based on individual criteria or external relationships √ Reporting/ad-hoc inquiry capabilities including links with third-party report writers to extract management data from the system
Documentation & litigation management	<ul style="list-style-type: none"> √ Document imaging to ease search and retrieval, facilitate document sharing and reuse, reduce storage needs and costs, and ensure document integrity. √ Software to link documents to a matter, event, invoice or entity and integrate with document management systems (e.g., PCDocs) √ Litigation support system for organizing, analyzing and presenting evidence

Best Practices for Municipal Law Offices – Technology (cont.)

Issue	Municipal Law Office Best Practices
Financial	<ul style="list-style-type: none"> √ Financial management software for budgeting, accounting and billing √ Electronic invoicing system for processing invoices, uploading them into the matter management system and routing them for approval and payment
Other	<ul style="list-style-type: none"> √ Internet and corporate intranets to maximize staff access to information (e.g., remote access from home, client site or courtroom) √ Voice recognition technology to enable lawyers to transcribe voice-recorded notes, commentaries, letters and depositions into electronic file documents √ Mobile technology (e.g., Personal Data Assistants and laptop computers) to empower mobile attorneys (e.g., interface with the matter management system) √ Automated fax reception and transmittal system to automatically routed faxes to their intended recipients and log basic information for each facsimile transmission

Many law departments have initiated computer leasing programs to help control the costs of upgrading hardware and maintaining current technologies. A phased replacement plan and pre-defined upgrade initiative may be more cost-effective for desktop and laptop computers. A lease program would reduce the capital outlays required for system upgrades, and ensure that the infusion of new equipment at regular intervals.

Our recommended tactics are discussed in more detail below.

1. Establish a strong legal administrator position.

The CAO needs a full-fledged Legal Administrator, a position commonly found in most law firms and corporate law departments. The CAO should hire an experienced Legal Administrator (and also retain the present Administrative Services Manager's position). Appendix J provides a draft Legal Administrator position description.

The key to making the Legal Administrator's position effective is for the City Attorney and Deputy City Attorneys to delegate most administrative duties to the Legal Administrator, consistent with the position description mentioned above. Approval authority for the matters within the Administrator's purview should be delegated to him or her, including the authority to approve payment for expenditures anticipated in the authorized budget.

The CAO should centralize management responsibility for all support staff⁵² under the Legal Administrator. Centralizing management of all support staff under the Legal Administrator will ensure more consistent management and improved staff performance. Progressive law offices have found that strong and effective Legal Administrators pay for themselves. They reduce the administrative burden on lawyer-managers and that, in turn, increases the legal output.

⁵² Note that our definition of support staff does *not* include paralegals – they are part of the professional staff.

Day-to-day supervision of the support staff – as it relates to the legal work they are handling – should remain the duty of the lawyers with whom they are working. But all discipline and formal supervisory actions for support staff (e.g., work and leave scheduling) should be handled by the Administrator. See the position description outlined in Appendix J for details.

It appears that the Legal Administrator will have sufficient time to carry out the duties envisioned in the position description, so long as the present Administrative Services Manager position is retained and a Senior Department Systems Specialist is authorized and hired as recommended herein.

2. Hire a Senior Department System Specialist (DSS).

The CAO should hire a Senior Department System Specialist (DSS). City departments with qualified DSS personnel resolve technology problems more quickly and have higher productivity levels. The Senior DSS should report to the Legal Administrator.

The Senior DSS should be charged with helping CAO staff take full advantage of available technology. He or she should continually inform and train CAO employees on available software packages and other technology resources (e.g., the document management system, several web-based initiatives and an extensive training resource).

3. Adopt a technology standardization and security policy.

The CAO should adopt a technology standardization policy and develop appropriate controls to prevent the use of non-approved hardware and software. The DSS should be charged with resolving these issues. They are easily resolvable, but the problem has been that the CAO has not had a DSS.

Additionally, members of the CAO have expressed concern with the *City's* document management system, PC Docs. PC Docs is implemented throughout all City Departments as the standard document repository (database). The CAO's documents, which of course are generally privileged and confidential, share the same database with all other City departments. This raises serious security issues because it potentially allows access to confidential legal materials by anyone with access to the City's document management system (PC Docs).

PC Docs, per se, however, is not the problem. The PC Docs system contains needed security controls that allow for locking CAO documents so that only selected CAO employees can access them. The central issue is one of user training. That is, while security measures can be implemented in PC Docs, CAO computer users are not fully trained regarding how to properly use the security features of the software to secure their documents. Still, of course, the lack of security for CAO documents is a cause for concern.

There are two alternative solutions. First, implement a decisive and comprehensive training program for all CAO users about the security features of PC Docs. Or, migrate the CAO's electronic documents to a separate PC Docs database (i.e., on a separate server), to maintain physical separation of documents. This alternative would be much simpler to implement, and once implemented, would require no policing or enforcement (as would the first alternative), and it would relieve the CAO from any potential future problems that could arise from having a shared database.

4. Complete the implementation of the matter management system.

The CAO should aggressively move to complete the full office-wide implementation of the ProLaw matter management system. This should be the first priority of the Senior DSS.

5. Develop a plan for meeting the CAO's space needs.

In addition to upgrading the quality of some of the present office space and finding more space for individual lawyer offices, the CAO needs additional meeting and work space. Specifically, the space plan should include several conference rooms of various sizes and at least one large "war room" to house materials and prepare major litigation matters as the case develops and trial nears.

Detailed standards and guidance concerning the quality and quantity of law office space are set forth in *How to Manage Your Law Office*⁵³. The standards, although too numerous to mention here, are easily available – most law libraries contain a copy of the book – and the consultants have provided the CAO with a copy.

For the short-term, the City should move CAO staff to another site, or free space in City Hall so that more CAO staff can be housed in the same location. Some space could be available in City Hall once the CAO's present Risk Management function is spun off. Long-term options could include acquiring additional space near City Hall or freeing up space in or near City Hall as the result of opening the "one-stop development center." In working with Asset Management to identify the most cost-effective option, the CAO should consider the recommendations for additional staff.

Strategy No. 7 – Improve the management of outside legal services.

As outlined in the strategy templates set forth in Appendix E, this strategy includes three tactics as follows:

- Clarify outside counsel management responsibilities within the CAO
- Strengthen outside counsel guidelines and management systems
- Develop a preferred provider program

⁵³ See chapter 14, "Law Office Design," *How to Manage Your Law Office*, by Mary Ann Altman and Robert Weil, Matthew Bender, 1998.

Implementation of the tactics in Strategy 7, in conjunction with earlier strategies for increasing staff levels, improving training and retaining top lawyers, will reduce the need for outside counsel. Introducing a preferred provider program and inducing price competition will generate considerable savings for the work referred to outside counsel.

Based on the experience Altman Weil has had with many in-house law departments that have made improvements in the areas mentioned above, the City of San Antonio could save hundreds of thousands of dollars were it to implement needed controls and move to a preferred provider program with non-hourly pricing. Experience tells us that the recommended controls will ultimately result in savings of 10 to 30 percent if implemented properly. Based on the nearly \$3 million spent by the City on outside legal services last year, that would amount to savings of \$300,000 to \$900,000 annually.

The table below lists best practices for the use of outside counsel by municipal law offices.

Best Practices for Municipal Law Offices – Outside Counsel

Issue	Municipal Law Office Best Practices
Planning & selection	<ul style="list-style-type: none"> ✓ A clear policy and objective criteria for identifying those matters best handled in-house and those best handled by outside lawyers and law firms ✓ A formal referral/bidding process, including selection criteria, for awarding legal matters to firms providing the most cost-effective services ✓ Deployment of an outside counsel “convergence” program (i.e., designation of preferred providers in exchange for per-matter discounts) ✓ Portfolio referral/bid process for routine, high-volume matters
Management & control	<ul style="list-style-type: none"> ✓ Formal guidelines (incorporated into every outside counsel agreement) governing how the work will be handled and city payments will be made ✓ Effective controls over the direction and costs of every outside counsel matter ✓ A formal system for assessing the performance of outside counsel and determining whether any future work should be referred to that lawyer or law firm
Pricing	<ul style="list-style-type: none"> ✓ Systematic review of matters regularly referred to outside counsel to determine which matters should be priced on an alternative basis (e.g., fixed-fee) ✓ Policy requiring outside counsel to share with the city the alternative pricing arrangements offered by that lawyer or law firm to other clients ✓ Appropriate incentives to encourage outside counsel to reduce the cost of services and the time to deliver services
Other	<ul style="list-style-type: none"> ✓ Ongoing training in managing outside counsel and reviewing invoices ✓ Staff specialist to serve as a clearinghouse for identifying best practices for monitoring and controlling outside counsel costs and service quality

Achieving and maintaining an appropriate mix of inside and outside counsel is one of the greatest challenges facing municipal legal departments. Generally, municipal law departments should handle the most significant matters internally. A determination of significance should be based on established criteria (e.g., the monetary value or sensitivity of the matter). Exceptions may be made where practical considerations dictate otherwise (e.g., the inability to retain the requisite internal expertise) or cases that require more resources than the CAO can devote. For significant matters referred to outside counsel, however, the City should retain the lead strategy role in-house to ensure that outside counsel are effectively representing the city’s best interests.

Our recommended tactics for this strategy are discussed in more detail below.

1. Clarify outside counsel management responsibilities within the CAO.

Although management of outside counsel by the CAO is consistent with what we usually see in government law departments, it should be strengthened and improved. San Antonio's expenditures for outside counsel are not out of line (based on our work with other major cities), but improving the system of managing outside lawyers could improve the cost-effectiveness of outside legal services.

To begin this process, the CAO should designate an experienced attorney as Outside Counsel Manager to coordinate the selection, evaluation and supervision of outside counsel. The Legal Administrator should assist the Outside Counsel Manager in administrative matters pertaining to outside counsel (e.g., billing).

2. Strengthen outside counsel guidelines and management systems.

The CAO should revise its outside counsel guidelines and improve its outside counsel management system. First, it should establish selection criteria for outside counsel, such as the following:

Sample Outside Counsel Selection Criteria

Factor	Comments
Understanding of the City	Prepared to educate itself (at no cost to the City) about the City's organization and services to a sufficient depth to carry out the assignment efficiently and effectively; considers City's strategic objectives in developing legal strategies rather than a purely academic analysis of the law
Integrity	Uncompromised integrity and ethics; maintains a network of interactive and trustworthy relationships broadly within the relevant community
Qualifications & experience	Offers an excellent legal staff with the requisite expertise and resources for promoting the City's interests, not available or deployable in the CAO; offers exposure to a wide range of transactions and experience in current practices; possesses strong technical expertise in relevant laws and regulations, writing and negotiation skills; demonstrates a strong knowledge of municipal law (if relevant to the engagement)
Service approach	Committed to satisfying client requirements and delivering quality and innovative services; ensure sensible risk assessment and practical solutions; demonstrated responsiveness and ability to produce work in a timely manner; will work as a team with the City's internal legal and business people; willing to build cross-functional teams of internal/external lawyers; able to provide "market intelligence" and assume an advocacy position for the City even when the firm is not specifically retained for an assignment
Attorney management	Generally push work down to the lowest level competent to handle it; keeps teams leanly staffed; willing to consult the City on staffing and seeking prior approval for any significant change to a team; willing to support diversity in the workforce
Accountability	Assign a designated partner with overall responsibility for the matter to whom the City would address quality, billing and other major issues; will keep the City informed of its activities in sufficient detail and with sufficient timeliness (including advance notice) to enable the City to effectively manage its work and to make informed decisions on both organizational and substantive matters relating to the engagement

Sample Outside Counsel Selection Criteria (cont.)

Factor	Comments
Cost management	Performs work at the lowest billing rate appropriate for the assignment; offers alternate pricing arrangements, including fixed fee agreements, incentive pricing and risk-sharing; offers reasonable discounts from standard hourly rates, fixed annual retainer rate for certain general, recurring counseling and value-added services (e.g., topical newsletters, training seminars) at no additional cost; does not bill for travel time unless work being performed during the travel time being charged; bills for out-of-pocket costs (e.g., fax, e-mail, word processing, copying, overtime, phone calls) at actual cost

In addition, the CAO should establish formal guidelines for managing outside counsel. Attached are recommended guidelines and forms to be used by the City to increase the cost-effectiveness of outside counsel (Appendix K). They include the following:

- Outside Counsel Engagement Guidelines
- Outside Counsel Selection Evaluation Form
- Outside Counsel Retention Form and Letter
- Litigation Cost Projection/Budget Form

The CAO should employ an Outside Counsel Post-Engagement Appraisal Form to evaluate the legal services it procures. A sample form is illustrated below.

Sample Outside Counsel Post-Engagement Appraisal Form

Evaluation Factor	Assigned Ratings				
	1	2	3	4	5
Independence and integrity					
Quality of service					
Responsiveness and timeliness					
Cost-effectiveness of service					
Technology support					
Cultural compatibility					
Other factors					

Note: Ratings should be scored from 1 (lowest) to 5 (highest).

The results of the CAO's appraisal process should be incorporated into future procurement efforts.

3. Develop a preferred provider program.

The Outside Counsel Preferred Provider Program envisions the use of competitive bidding practices to pre-qualify certain outside lawyers and law firms for work that cannot be handled internally by the CAO. Furthermore, our recommendation for competitive bidding does *not* envision that the lowest cost will be determinative. Rather, cost, while very important, would be only one factor that would be considered in evaluating and selecting outside counsel.

V. Risk Management

A. Overview

In 2000, the City Attorney recommended that the Risk Management Division (RMD) be transferred to another department within the City. As the City considers our recommended strategies for improving the CAO, it should consider reassigning the RMD from the CAO to another department. While we did not identify any significant problems associated with the City's risk management program, retaining the RMD under the CAO could impede the CAO's progress in improving legal services.

This project did not encompass a comprehensive review of the City's risk management program or its performance. Rather, we conducted a limited review of the organizational implications of retaining the RMD under the City Attorney. Based on this limited review, we have concluded that transferring the RMD to another department would, by increasing the CAO's organizational focus on legal services, facilitate the implementation of the recommended strategies for improving the CAO.

B. Strategic Vision for Risk Management

Based on our review of best practices, we believe that, in the future, the leading public sector risk management programs will be increasingly centralized, under the direction of an entity manager (e.g., a chief administrative, operating or financial officer). In addition, they will tend to be funded through single-purpose, self-balancing funds (e.g., internal service funds) rather than the general fund.

The centralized organizational model, coupled with a self-supporting funding structure, will better enable risk management programs to respond effectively to new challenges. Risk managers we surveyed report that such challenges could include new federal or state safety regulations (e.g., ergonomic requirements), new environmental regulations, other changes in the legal environment, and changes in employment practices.

Pima County, Arizona is illustrative of this trend. Its risk management program is directed by the Finance Department and financed through a special risk management fund. Its functions include the following:

- General liability insurance selection and administration
- Risk and loss prevention and mitigation
- Liability claims administration, including job-related torts
- Employee safety administration and training
- Occupational medicine, including physicals and drug and alcohol screening
- Unemployment insurance
- Environmental (super fund site) investigations
- Contract analysis

Pima County's risk management division uses its financial flexibility to fund new programs (e.g., ADA compliance) and equipment (e.g., specialized safety equipment), and to support other departments with relevant initiatives (e.g., establish a self-insured dental plan and specialized risk prevention program for the sheriff).

We also anticipate greater inter-local cooperation in this area. For example, the City of Charlotte and Mecklenburg County in North Carolina, as part of a broader effort to consolidate similar functions, established a joint risk management program. The City-County Risk Management Department coordinates risk management policies and initiatives for the City, County and Board of Education.

C. Key Risk Management Findings

1. Centralization

San Antonio employs a centralized risk management program model, and we believe that it should remain that way. From a best practice perspective, there appears to be a growing recognition among professionals that risk management should be centralized. The International City Management Association (ICMA) has stated that "centralization of risk management responsibility in one ... office is best."⁵⁴

Indeed, there is a distinct trend toward greater centralization of risk management functions. The traditional risk management functions have long included general liability insurance administration, claims administration, safety and loss control. Most cities define risk management as including such elements as property and casualty insurance and claims administration, claims subrogation, settlement and litigation, worker compensation and occupational health and safety administration.

In recent years, an increasing number of local governments are making their risk managers responsible for employee benefits administration. The 1999 PRIMA survey, for example, revealed that the percent of risk managers responsible for employee benefits administration increased from 5 percent in 1996 to 26 percent in 1999.⁵⁵ Some of the cities we surveyed, like Fort Worth and San Diego, assign employee health benefits administration to their risk management programs (Fort Worth also includes unemployment compensation).

Our supplemental survey, which included one moderately-sized city, three counties and one consolidated city-county program, confirmed this finding in part. All respondents centralize the property insurance administration, worker compensation and contract analysis functions, but only two of the entities centralize their safety and loss prevention duties under a single department (see table below).

⁵⁴ Managing Small Cities and Counties: A Practical Guide, Published for the ICMA Training Institute, 1994.

⁵⁵ Cost of Risk Evaluation in State and Local Government, Public Risk Management Association & Deloitte and Touche LLP, 1999.

Summary of Supplemental Risk Management Organizational Survey

Program or Function	Anaheim (CA)	Charlotte/Mecklenburg	Harris County (TX)	Montgomery County	Pima County (AZ)
Property insurance administration	Risk Management	Risk Management	Risk Management	Risk Management	Risk Management
Worker compensation	Risk Management	Risk Management	Risk Management	Risk Management	Risk Management
Contract analysis	Risk Management	Risk Management	Purchasing	Risk Management	Risk Management
Safety & loss prevention	Decentralized	Decentralized	Decentralized	Risk Management	Risk Management
Unemployment insurance	Risk Management	HR	HR	HR	Risk Management
Medical screening	Risk Management	HR & Risk Management	HR	HR	Risk Management

There continues to be considerable divergence among local governments as to the centralized assignment of medical screening and unemployment insurance functions. While some local governments assign these functions to risk management units, other entities retain these functions under their human resource management units.

2. Organizational Placement

Once a local government decides to centralize its risk management program, it must then decide where to place it in the organizational structure. The City of San Antonio places its risk management program under the City Attorney. It used to place it under the Finance Department.

Most local governments do not assign their risk management programs to their attorneys. According to the Public Risk Management Association (PRIMA), the most frequent organizational placement for the risk management function is the chief administrator, finance officer or director of administration. During the 1990s, the percent of local governments assigning risk management to high-level administrative officials increased. Assigning the function to the chief legal officer remains relatively rare.

Of the 359 respondents in PRIMA's 1999 survey, only 5 percent assigned risk management to the chief legal officer. In contrast, 31 percent reported that their risk management function was assigned to Finance, 17 percent to Administration, 20 percent to entity management (e.g., city manager or board of directors) and 15 percent to Human Resources.⁵⁶ Other arrangements (e.g., decentralized or distributed reporting) accounted for 12 percent of the respondents. According to PRIMA's 1992 survey, about 45 percent of local governments assigned their risk manager to the chief administrator, finance officer or director of administration.⁵⁷

⁵⁶ Cost of Risk Evaluation in State and Local Government, Public Risk Management Association & Deloitte and Touche LLP, 1999.

⁵⁷ Management Policies in Local Government Finance, Fourth Edition, ICMA, 1996.

Our benchmarking survey of selected large cities reinforced PRIMA's finding that most public entities do not assign the risk management function to the Chief Legal Officer. As illustrated by the table below, three of the entities in our survey reported that they assign risk management to the City Manager. Only San Antonio assigns risk management to the chief legal officer.

Summary of Risk Management Benchmarking Survey

Item	Austin	Dallas	Fort Worth	Houston	San Diego	San Antonio
Population	642,994	1,301,060	504,350	3,900,000	1,052,300	1,187,600
Total FTEs	10,509	10,600	5,476	23,000	15,000	11,806
Risk Mgt. FTEs	10.2	23.7	13.0	87.3	80.7	45.0
Organization Placement	Human Resources	City Manager	City Manager	Finance, HR & Attorney	City Manager	Attorney
Worker Comp.	Unknown	Self-Adm.	TPA	TPA	Unknown	TPA
Liability	Unknown	Self-Adm.	Self-Adm.	Self-Adm.	Unknown	TPA

Note: TPA = Third party administrator. Austin and San Diego costs exclude internal service fund costs for insurance premiums and claims.

Our limited follow-up survey of other local governments reinforced PRIMA's findings regarding the organizational placement of risk management. Of the five additional entities, we surveyed, none reported assigning risk management to the chief legal officer. The City of Anaheim assigns risk management to the City Manager while Charlotte/Mecklenburg County (NC), Montgomery County (MD) and Pima County (AZ) assign it to the Finance Department. In contrast, Harris County (TX) has a decentralized risk management program, assigning different functions to different departments.

In summary, about 83 percent of local governments assign their risk management programs to entity management (e.g., city manager or council) or a central administrative support department (e.g., Finance, Administration or Human Resources). While no single administrative department (e.g., Finance) has emerged as the preferred model, it is clear that central administration is considered a best practice organizational placement for risk management. For instance, one state PRIMA chapter (Colorado) recommends a high organizational placement for risk management, such as assigning it to a top entity administrator.⁵⁸

The principal argument for assigning risk management to the City Attorney is that it can improve coordination and communications between risk management staff and the attorneys who handle risk management litigation. Of course, this improved coordination can be achieved in other ways (discussed in our recommended strategy for risk management), short of making the chief legal officer responsible for the day-to-day supervision of risk management staff.

3. Claims Administration

⁵⁸ Benchmarking, Best Practices, and Performance Measurements for Public Entity Risk Management, the Colorado Chapter of the Public Risk Management Association, November 1999.

One of the potential advantages of assigning risk management to a municipal attorney is communications. However, our interviews disclosed a need to improve communications between the CAO, RMD and Third Party Administrator (TPA), especially once a liability claim is litigated. When a liability claim goes to trial, the lead attorney assumes sole responsibility. The RMD has little input into the case and receives little feedback as to the status of the pending case. The expertise of the Risk Manager and the TPA is not fully utilized to evaluate win/loss probability, determine the reserve that will be needed for the claim, and initiate the evaluation and discovery of evidence. Also, the TPA sometimes meets without notifying the participating department.

In short, we found that the Risk Management Division operates relatively independently while within the CAO. Communications between the attorneys and Risk Management, even as to cases assigned to attorneys for handling, are not as extensive as they should be. The Risk Manager could have a greater role in determining which cases should be assigned to outside counsel, versus those that are retained in house. Although the Risk Manager has a voice on early settlement decisions, he is not effectively engaged with case developments once a case is assigned to a city attorney or outside counsel. These issues should be relatively easy to address.

The City uses a TPA to handle all worker's compensation issues. If the TPA deems it necessary to use a case manager, the City must approve this action, which becomes an additional expense to the City not covered under the TPA contract. While the City uses case managers in a limited manner, the RMD is evaluating their outstanding worker's compensation claims to determine the need for increasing the use of case managers.

The City's 1996 decision to establish a Claims Board to settle claims below \$50,000 and authorize the City Attorney to settle claims below \$15,000 was sound. This action freed City staff to settle more cases and reduced the number of outstanding litigation claims. In fact, for the four-year period following this action, from 1996 to 2000, the City increased the number of cases it settled fivefold and decreased the average settlement amount by 18 percent.⁵⁹ The City Council should consider adjusting the above thresholds within the next two years.

D. Recommended Strategy

Strategy No. 13 – Modify risk management organizational practices.

As outlined in the strategy templates set forth in Appendix E, this strategy includes four tactics as follows:

- Transfer the City's centralized risk management program
- Increase Risk Manager authority to help administer liability claims

⁵⁹ From 1992 to 1996, the City settled 29 cases within the range of \$5,000 to \$50,000 (for an average settlement of \$16,589) and from 1996 to 2000, the City settled 146 cases within the same range (for an average settlement of \$13,602).

- Develop an insurance defense model
- Increase the use of case managers for worker's compensation claims

Implementation of the tactics in this strategy will free the City Attorney to concentrate on improving legal services while, at the same time, maintaining effective communications between risk management staff and litigators.

1. Transfer the City's centralized risk management program.

San Antonio should continue its use of a centralized risk management model. That model should clearly define the responsibilities assigned to RMD, and the capabilities required for meeting those responsibilities. Regardless of the ultimate placement of the City's RMD, that division should include the core competencies of a comprehensive risk management program, such as those outlined below.

Summary of Critical Core Competencies for Risk Management

Core Competency Requirement	Source
Comprehensive risk planning, identification, measurement, reporting & evaluation	Management Policies in Local Government Finance, Fourth Edition, ICMA, 1996
General liability insurance recruitment, procurement & administration	Local Government Finance, Concepts and Practices, GFOA, 1991
General liability claims administration	Local Government Finance, Concepts and Practices, GFOA, 1991
General risk, accident & injury prevention, mitigation & control, especially for public safety, fleet & facility matters	Local Government Finance, Concepts and Practices, GFOA, 1991 Performance Measurements for Public Entity Risk Management, Colorado Chapter of PRIMA, 1999
Worker compensation claims management, accident investigation & loss analysis	Performance Measurements for Public Entity Risk Management, Colorado Chapter of PRIMA, 1999
Employee safety audits, incentives, training, administration & communications	Performance Measurements for Public Entity Risk Management, Colorado Chapter of PRIMA, 1999
Environmental health audits, investigation, training & testing	Performance Measurements for Public Entity Risk Management, Colorado Chapter of PRIMA, 1999

The organizational placement decision should be, at least in part, a function of the core competencies required for risk management. The broad array of core competencies outlined above is more likely to be cultivated or found in entity-wide administration and financial management functions than in more specialized staff offices like a legal department. It also is more likely to demand a more extensive set of management skills than is typically required of attorneys.

We recommend that the City retain unified management of risk management functions, but make the Risk Management Division (RMD) a separate department or part of the Finance Department. In our view, this would be a more suitable organizational structure than placement within the CAO. It would provide RMD with sufficient organizational visibility and facilitate communications with other staff departments (e.g., Human Resources and Asset Management). At the same time, it would free the CAO to focus on managing legal resources and improving the quality of legal services.

Transferring the RMD to another department, however, should be contingent upon the City's determination that RMD's new host department possesses adequate managerial capacity to supervise the risk management program. For example, the City of San Antonio is searching for a new Finance Director, and the City Manager just adopted a new organizational structure. As a result, it may be appropriate to delay transferring Risk Management from the CAO until the management team is solidified.

2. Increase Risk Manager authority to help administer liability claims.

The Risk Manager should have the authority to review all discovery documents (e.g., medical records, deposition summaries and motions). While it should be the lead attorney's responsibility to determine discovery (e.g., witnesses to be interviewed and medical records to be reviewed), the Risk Manager should review all discovery documents. There should be constant and continual two-way feedback regarding the status of pending litigation. The Risk Manager should also be required to sign off on all settlements.

By increasing the authority of the Risk Manager, a system of checks and balances would be developed to help ensure that claims are settled in the most efficient and reasonable manner possible. This should help the Risk Manager establish liability reserves, give him added insight on how a case should be settled (and for how much), and improve his knowledge of other outstanding claims that may be similar to a litigated claim which, if settled, could pose additional financial liability to the City.

3. Develop an insurance defense model.

We recommend that the City institute an insurance defense model to ensure effective communications between the CAO, RMD and Third Party Administrator (TPA) once a liability claim goes to trial. An insurance defense model would increase the RMD's control over the administration of liability claims (e.g., reviewing discovery evidence, liability ramifications and settlement terms, reserves for loss). It also would require the CAO to keep the RMD and TPA fully informed of the status of pending liability claims, and allow the two to work more closely during the litigation of liability claims.

This model will improve communications between the CAO, RMD and TPA once a liability claim is litigated. It will enable the City to take full advantage of the expertise of the Risk Manager and TPA to evaluate win/loss probability, establish the reserve for the claim, and improve the evaluation and discovery of evidence. Using the knowledge of all three parties through communication would help limit the City's liability claims. The TPA will also know when and for how much a claim may settle in order to prepare for the necessary withdrawal of funds.

This tactic will require that certain technology be in place to support the flow of communication. By expanding the use of Pro Law to the RMD, the City will enable the RMD to readily access periodic reports on the status of each case.

One way to maintain a high level of communication between the Litigation Division and RMD is to require the co-location of both units in one central facility. Although the RMD could be reassigned organizationally, it would still be advantageous to have the two divisions centrally located within the same building. This would also soften the impact of moving the division out of the CAO.

The insurance defense model could also be broadened to improve the communication between RMD and other City departments in the areas of worker's compensation and safety/training. By creating a risk management team comprising the Risk Manager, Worker's Compensation Supervisor, Liability Supervisor, Safety Supervisor and designated Human Resource staff, the City could enhance compliance with training and safe workplace guidelines. The team's goals should be to develop and monitor training policies and procedures and to increase communication between all City departments regarding safety and training.

4. Increase the use of case managers for worker's compensation claims.

We encourage the RMD to strongly consider increasing the City's use of case managers for outstanding worker's compensation claims. The use of case managers to administer pending worker's compensation claims is being practiced more and more by private and public entities alike. It can be a cost-effective method for minimizing the financial liability associated with worker's compensation claims. Some studies show that, for every \$100 spent on worker's compensation claims, there can be an additional \$300 to \$1,000 incurred on indirect costs (e.g., replacement wages, lost service costs and claim administration costs). A case manager can help reduce such costs.

The City should determine the most appropriate time to assign a case manager to the case. The standard for using a case manager is usually after the third lost work day. After a period of time, RMD should conduct a cost-benefit analysis to determine whether case management should continue to be outsourced or a case manager position should be established within Risk Management. One advantage of an internal position is that the case manager's role could be expanded to provide expert advice in the area of liability claims litigation.

VI. Implementation Issues

A. Strategy Implementation

Performance reviews and similar management studies offer several benefits, including an objective assessment of current operating practices and the formulation of ideas for improving operational effectiveness and efficiency. The greatest potential value of such studies lies in the ultimate implementation of any recommended strategies.

To that end, we have provided two implementation tools—strategy templates and a macro implementation schedule—for the City to use in planning and managing the implementation of the recommended strategies for improving the business contract management processes and City Attorney’s Office (CAO). These implementation tools are discussed below.

The strategy templates, which are presented in Appendix E, provide key implementation information for each of the recommended strategies. The strategy templates outline the recommended strategies, tactics, preliminary implementation actions, responsibility assignments, potential implementation barriers and estimated three-year costs. They are designed for possible use by the City staff persons who are assigned lead responsibility for implementing particular strategies.

The macro implementation schedule, which is presented in Appendix F, is intended to help the City Manager track the progress of the recommended strategies from a citywide perspective. Both implementation tools are intended for the City’s refinement and use. It is our hope that the responsible staff will review and update the implementation tools and then use them to monitor implementation progress.

We have recommended several strategies and tactics, but some are more crucial than others. As illustrated by the tactic priority rankings in Appendix E, we believe that the most critical tactics for improving business contract management processes are the citywide Contract Services Unit (Strategy No. 1), business contract standards (Strategy No. 2), and citywide contract tracking system (Strategy No. 6).

Regarding the CAO improvement strategies, we believe that the most important strategic priorities include the proposed organizational structure (Strategy No. 2) and additional attorneys and paralegals (Strategy No. 3). We also believe that a competitive compensation structure is vital (Strategy No. 5), but that this tactic should be coupled with civil service rule changes (Strategy No. 4) and effective timekeeping practices (Strategy No. 5).

As with any change, there will be obstacles. In most cases, staffing and budget constraints represent the most significant potential implementation barriers. However, if the City makes the investments recommended herein, we believe that these barriers can be overcome. In addition, some legal research will be required to address the civil service and contract authority issues and, in some cases, amendments to state and local

law may be required. Effective implementation will also require the participation and input of numerous other municipal departments, especially pertaining to the business contract management issues.

B. Potential Fiscal Impact

The recommended strategies will require an investment on the part of the City. In a growing city, like San Antonio, such investments are periodically needed to enable the city government's administrative structure to keep pace with growing service demands in an increasingly demanding operating environment. For both the business contract management processes and the CAO, we strongly believe that investments are needed to ensure that quality services will be delivered in an efficient and effective manner.

We have worked with the Management & Budget Office to develop preliminary cost estimates associated with our recommended strategies. These cost estimates, which are discussed below, are conservative in that they represent the high end of the range of potential costs. While we also expect that the City will realize some significant cost savings associated with our recommended strategies, these benefits are more difficult to quantify and more likely to occur downstream, at least one or two years after the strategies are implemented.

1. Business Contract Strategies

In [Appendix G](#), we have presented an itemized summary of implementation costs for the recommended business contract improvement strategies. The appendix summarizes the estimated one-time costs and recurring costs for the recommended strategies for the three-year period beginning October 1, 2001 and, for each fiscal impact item, the underlying assumptions as well. The highlights of these fiscal impact estimates are discussed below.

As summarized by the table below (and presented in more detail in [Appendix G](#)), we have estimated \$692,000 in one-time costs—but only \$365,200 in recurring annual costs—for the recommended business contract management strategies.

Cost Impact of Proposed Strategies – Business Contract

Fiscal Impact Item	One-time Cost	Recurring Cost
CSU contract management staff positions (6)		\$301,400
Office space expansion		43,800
Mystery shopping program		20,000
Contract manual & training program	\$122,000	
Contract management system	250,000	
Document management technology for contracts	125,000	
Point of sales systems for concessionaires	130,000	
Mobile contract monitoring technology	65,000	
Total Costs	\$692,000	\$365,200

Note: The one-time costs are presented for three years, but the recurring costs are for one year only.

Most of the one-time costs associated with the business contract strategies are technology enhancement costs. The most significant technology initiative—the contract management system—accounts for an estimated \$250,000 in one-time costs. The one-time costs also include \$122,000 for developing contract standards and training materials.

Most of the recurring costs are for the six new Contract Services Unit positions. These estimates are based on current salary levels. We have not attempted to estimate the impact of salary increases that might result from any reclassifications.

We have recommended a substantial investment in improving the way the City manages its business contracts. However, as discussed earlier in this report, these contracts generate as much as \$300 million in revenues. In this context, a one-time investment of \$692,000 and an annual commitment of \$365,200 represent a small price to pay for more effective contract management and oversight.

In addition to the qualitative benefits of effective contract management (e.g., stronger contractor accountability and better services to citizens), we believe that the recommended strategies will enhance revenues and produce other quantifiable benefits. Together, these benefits should pay for the City's investment. Since such benefits are extremely difficult to quantify with any precision, we do not believe that the City should rely on them for budgeting purposes until better data is available.

2. City Attorney's Office

In [Appendix G](#), we have presented an itemized summary of implementation costs for the recommended CAO improvement strategies. The appendix summarizes the estimated one-time costs and recurring costs for the recommended strategies and, for each fiscal impact item, the underlying assumptions as well. The highlights of these fiscal impact estimates are discussed below.

As summarized by the table below, we have estimated \$260,000 in one-time costs and \$810,400 in recurring annual costs for the recommended CAO improvement strategies.

Cost Impact of Proposed Strategies – CAO

Fiscal Impact Item	One-time Cost	Recurring Cost
Additional legal staff		\$365,000
Revised professional compensation structure		160,000
Training program (including CLE reimbursement)		98,400
Legal administrator & systems specialist		99,400
Office space expansion		87,600
Charter election for civil service issue	\$250,000	
File review system	10,000	
Total Costs	\$260,000	\$810,400

Note: The one-time costs are presented for three years, but the recurring costs are for one year only.

The most significant one-time cost associated with the CAO improvement strategies is \$250,000 for a special charter election for addressing the civil service issue. The one-time costs also include \$10,000 for developing a formal file review system for attorneys.

Expanding the professional staff (i.e., filling the vacant First Assistant Attorney position and adding seven new attorney and paralegal positions) accounts for \$365,000 (about 45 percent) of the estimated recurring costs. Other significant cost items include higher salaries for professional staff, two new administrative positions (legal administrator and systems specialist) and office expansion.

In addition to the qualitative benefits of effective legal services (e.g., reduced legal exposure), we believe that the recommended CAO improvement strategies will also produce some quantifiable benefits. Two significant benefits included reduced outside counsel costs and improved attorney productivity. We believe that these benefits should more than offset the cost of the City's initial investment. However, since such benefits are extremely difficult to quantify with any precision, we do not believe that the City should rely on them for budgeting purposes until better data is available.

3. Risk Management

We also anticipate a fiscal impact associated with our recommended organizational strategies for risk management. As summarized by the table below, we anticipate only \$4,400 in one-time costs and \$50,000 in annual recurring costs.

Cost Impact of Proposed Strategies – Risk Management

Fiscal Impact Item	One-time Cost	Recurring Cost
Increased use of case managers	\$0	\$50,000
Develop marketing/outreach plan	\$4,400	\$0
Total Costs	\$4,400	\$50,000

Note: The one-time costs are presented for three years, but the recurring costs are for one year only.

All of our fiscal impact estimates are preliminary in nature and should be examined in further detail as the City moves forward with the implementation of particular strategies. In addition, we urge the City to develop measurable cost savings targets to employ for monitoring the success of the recommended strategies.